112-396

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1884.**

No. 84.

MARY ANN BATCHELOR, APPELLANT,

*vs.*

SARAH A. BRERETON AND JAMES I. BRERETON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

**FILED OCTOBER 13, 1884.**

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1 *Bill. Filed Feb. 4th*, 1879.

In the Supreme Court of the District of Columbia.

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| SARAH A. BRERETON *vs.* JAMES I. BRERETON, WILLIAM H. BRERETON, Peter Hannay, John J. Byrne, John H. Wright, William H. Ward, Mary Ann Batchelor, Administratrix of Charles Batchelor, dec'd; John P. Barker, and John F. Sharretts, Executor. | No. 6617. Eq. Doc. 19. |

To the supreme court of the District of Coumbia, holding an equity court for said District:

The complainant is a resident of the District of Columbia, and brings this bill in her own right. The defendant, James J. Brereton, who is a minor of the age of sixteen years; Peter Hannay, John J. Byrne, John H. Wright, William H. Ward, and John B. Barker are residents of said District; the defendants, William H. Brereton and John F. Sharretts, are residents of State of Maryland, and the defendant, Mary Ann Batchelor, is a resident of the county of
2 Bergen, in the State of New Jersey. The defendant, James I. Brereton, is sued in his own right as heir-at-law of Samuel Brereton, Junior, late of said District, deceased; the defendant, William H. Brereton, is sued as trustee and tenant in common as hereinafter set forth; the defendants, John J. Byrne, William H. Ward, and John B. Barker, are sued as trustees, and the defendants, John H. Wright and Mary Ann Batchelor, administratrix, as beneficiaries as hereinafter stated, and the defendant, John F. Sharretts, is sued as executor of Samuel Brereton, Senior, as hereinafter described.

And your oratrix complains, as follows:

1. That heretofore, to wit, on the first day of May, A. D. 1851, Samuel Brereton, Senior, father of the defendant, William H. Brereton and of Samuel Brereton, Junior, conveyed to said defendant, William H. Brereton, and his heirs, part of lot 9, in square 455, in the city of Washington, in the District of Columbia, being the south fifty-four feet (54 ft.) front of said lot on Seventh street west, and running back fifty-three (53) feet three (3) inches on F st. north, in said city, and also all that part of lot 8, in said square 455,
3 beginning for the same at a point on the west line of said lot thirty-one (31) feet five (5) inches from the north line of F street north, and running thence due east four (4) feet six (6) inches, thence due north six (6) feet, thence due east two (2) feet six (6) inches, thence due north to the north bound-ry line of said lot, and thence by and with the said north bound-ry line due west to the west bound-ry line of said lot, and thence by and with said west boundary line of said lot to the point of beginning, in trust for the use and benefit of Mary Ann, wife of said Samuel Brereton, Senior, for her life, with remainder in fee for the use and benefit of said defendant, William Brereton and Samuel Brereton, Junior, as ten-

ants in common, as will more fully appear by reference to said conveyance duly recorded in liber J. A. S., 24, fol. 13, one of the land records for said District, and to the plat of said lots 8 and 9, in said square 455, herewith filed, marked Exhibit A, both prayed to be taken as part hereof.

The said Mary Ann Brereton, wife of said Samuel Brereton, Senior, died heretofore, to wit, on the —— day of ——, 18—.

4 2. That thereafter, to wit, on the 26th day of May, 1853, by deed, duly recorded in liber J. A. S. No. 56, at folio 259, prayed to be read as part hereof, said Samuel Brereton, Senior, conveyed to the defendant, William H. Brereton, and Samuel Brereton, in fee simple, the north twenty-one (21) feet front on Seventh street, west of said lot 9, by the depth of fifty-three feet three inches (53 ft. 3 in.), being all of said lot 9 not previously conveyed to said defendant, William Brereton, by the deed described in the preceding paragraph of this bill, as on reference to said "Exhibit A" will appear.

3. That thereafter, to wit, on the 2d day of February, 1854, by his deed of said date, duly recorded in liber J. A. S., fol. 429, of said land records, prayed to be taken as part hereof, said Samuel Brereton, Senior, attempted to convey the parts of said lots 8 and 9, in said square, described in said first paragraph of this bill, to the said William H. Brereton and Samuel Brereton, Junior, in fee, as tenants in common; but your oratrix is advised and believes that, by reason

5 of the conveyance described in said first paragraph of this bill, said Samuel Brereton, Senior, was no longer seized or possessed of any interest in said premises, and that said deed of February 2d, 1854, was wholly inoperative and without effect.

4. That thereafter, to wit, on the 29th day of September, A. D. 1859, by deed, duly recorded in liber J. A. S. 192, folio 405, one of said land records, a copy of which said deed is herewith filed, marked "Exhibit B," and prayed to be read as part hereof, said Samuel Brereton, Junior, together with your oratrix, his wife, conveyed all the right, title, and estate of him, the said Samuel, in and to both the hereinbefore-described parts of said lot 9, in said square, to the defendant, Peter Hannay, in fee simple, in trust, for the sole and separate use and benefit of your oratrix for life, with power to said Hannay, trustee as aforesaid, upon the written request of your oratrix and said Samuel Brereton, her husband, to sell and convey the same as they might direct; and if said Samuel should survive your oratrix, said property to revert to him, but if your oratrix

6 should survive said Samuel, then, in trust, upon her decease, to convey the same to his heirs, or such person or persons as he might by will direct; all of which, upon reference to said "Exhibit B," will more fully appear.

And your oratrix further shows unto this honorable court that in said liber J. A. S. 192, immediately following the above last-recited conveyance, and prayed to be read as part hereof, is recorded the order of your oratrix to said defendant Hannay to pay to her said husband, Samuel Brereton, Junior, one-half of your oratrix's half

of the rents and profits of said property during the life of said Samuel, without revocation.

5. That thereafter, to wit, on the 29th day of October, A. D. 1859, by their deed duly recorded in liber J. A. S. 186, at folio 374, prayed to be read as part hereof, your oratrix, the said Samuel, her husband, the defendant, William Brereton, with Gengeare, his wife, and the defendant, Peter Hannay, trustee as aforesaid, conveyed to one William Higgins, in fee simple, part of said lot 9, in said square 455, beginning for the same at the northwest corner of said lot, and running thence south 44 feet, thence east 33 feet 3 inches, thence north 8 feet, thence east 20 feet, thence north 36 feet, and thence west
7 53 feet 3 inches, to the place of beginning, as upon reference to said deed recorded as aforesaid, and to Exhibit A herewith filed, will clearly appear.

6. That thereafter, to wit, on the 7th day of August, 1873, by their deed of said date, duly recorded on said 7th day of August, 1873, in liber No. 727, at folio 122¼ of said records, a copy of which is herewith filed, marked "Exhibit C," prayed to be read as part hereof, your oratrix and the said Samuel Brereton, Junior, her husband, without the joinder of the defendant Hannay in said deed, attempted to convey to the defendant, John J. Byrne, part of said lots 8 & 9, therein attempted to be described, to secure unto the defendant, John H. Wright, an alleged indebtedness from the said Samuel Brereton to said Wright of $6,000, evidenced by the promissory note of said Samuel to the order of said Wright, dated the said 7th day of August, 1873, and payable three years after said date, with interest at the rate of ten per centum per annum, payable semi-annually, but your oratrix is advised and believes, and so charges, that whether or not the alleged indebtedness of her said husband to said Wright, or any part thereof, existed at date of said conveyance as now exists,
8 and whether or not it was competent for your oratrix, the wife of said alleged debtor, to convey her said separate estate in trust to secure an indebtedness of her husband, yet not only because of the failure of the defendant Hannay, trustee as aforesaid, to join in said conveyance, but also by reason of the erroneous and defective description of the parts of said lots thereby intended to be conveyed, said deed is irregular and imperfect, and if not wholly nugatory, is at least incapable of being operative and effective for the purposes for which it was executed, except through the medium of a court of equity, all of which upon reference to said Exhibits "A" and "C," herewith filed as aforesaid, will more fully and at large appear.

7. That theretofore, to wit, on the first day of February, 1873, by their deed bearing said date, but not recorded until after the deed described in the preceeding paragraph of this bill, to wit, on the 29th day of August, 1873, in liber No. 736, folio 304, of said land records, a copy whereof, marked Exhibit D, is herewith filed and prayed to be read as part hereof, for the purpose of securing to one Charles Batchelor, the intestate of the defendant Mary Ann Batchelor, the promissory note of the
9 defendant, William H. Brereton, dated the said 1st day of Feb-

ruary, 1873, and payable three years after date to the order of said Charles Batchelor, for the sum of $10,000.00, with interest at the rate of eight per centum per annum, said defendant, William H. Brereton, and Georgiana, his wife, conveyed to the defendant, William H. Ward, as trustee, the undivided interest and estate, legal or equitable, of their, the said William and Georgiana, in those parts of lots 8 and 9, which were attempted to be conveyed to said William Brereton and Samuel Brereton, Junior, by the aforesaid inoperative deed, described in the third paragraph of this bill. And your oratrix moreover shows unto this honorable court that a large portion of the parts of said lots purporting to be conveyed to said defendant Ward by the said conveyance of Feb. 1st, 1873, had been previously conveyed by the deed described in paragraph 5 of this bill to William Higgins, as upon reference to said paragraph and "Exhibit A," herewith filed, will clearly appear.

8. That thereafter, to wit, on the first day of June, 1874, by deed of said date, duly recorded in liber No. 756, fol. 18, a copy of
10 which, marked "Exhibit C," is herewith filed, and prayed to be taken as part hereof, said defendant, William Brereton and Samuel Brereton, Junior, conveyed to the defendant, William H. Ward, the said parts of said lots 8 and 9 in said square 455, as described in said inoperative deed of February 2d, 1854, recorded in liber J. A. S. 69, at folio 429, as aforesaid (a part of which said lots had already been conveyed to said Higgins in fee simple as aforesaid), in trust to secure to said Charles Batchelor an alleged indebtedness to him of said William and Samuel, evidenced by their said promissory note of even date therewith, and payable three years after date to the order of said Charles Batchelor for $3,500, with interest at the rate of ten per centum per annum. Your oratrix further shows unto this honorable court that, although she sealed, signed, and acknowledged the conveyance described in this paragraph of her bill, she did not otherwise join in it, nor is she mentioned therein as a party thereto; that said conveyance does not convey nor purport to convey any right, title, interest, or estate of your oratrix in and to said
11 property, or the right, title, interest, or estate of any person or persons other than that of the said William and Samuel, whose alleged indebtedness said conveyance was designed to secure; and your oratrix is advised and believes, and so charges, that, except to renounce her dower interest in said property, to which your oratrix would have been entitled in case said deed from Samuel Brereton, Senior, to the defendant, William Brereton and Samuel Brereton, Junior, under which deed said conveyance to said defendant Ward was made, had been operative and effective, the joinder of your oratrix in the execution and acknowledgement of said conveyance was wholly unnecessary and without effect.

9. That thereafter, to wit, on the 15th day of January, 1876, by their deed, duly recorded in liber No. 805, at folio 371, one of said land records, prayed to be read as part hereof, the defendant, Peter Hannay, trustee as aforesaid, Samuel Brereton, and your oratrix, his wife, conveyed to the defendants Byrne and Barker part of said lots 8 and 9 in said square, beginning for the same at the southwest cor-

12 ner of said square, and running thence north along the line of west 7th street 31 feet, thence east 33 feet 3 inches, thence north 8 feet, thence east 20 feet, thence north 62 feet 10½ inches, thence east 7 feet, thence south 56 feet 10½ inches, thence west 2 feet 6 inches, thence south 6 feet, thence west four feet six inches, thence south along the east line of lot 9 to F street, and thence 53 feet 3 inches to place of beginning, in trust to secure an alleged indebtedness of said Samuel Brereton, Junior, the husband of your oratrix, to the defendant Wright, which indebtedness your oratrix believes, and so charges, to be the same as that to secure which the defective conveyance by metes & bounds described in paragraph six of this bill was executed.

10. That thereafter, to wit, on the —— day of ——, 187–, said Charles Batchelor, payee of the notes described in paragraphs 7 and 8 of this bill, secured on the propety herein described as aforesaid died intestate, and that the defendant, Mary Ann Batchelor, thereupon, to wit, on the —— day of ——, 187–, applied for and obtained letters of administration upon the estate of him, the said Charles, and that said defendant thereupon became, and thence hitherto

13 hath continued and now is, the duly qualified administratrix of him, the said Charles Batchelor, payee and beneficiary as aforesaid.

11. Your oratrix further shows unto this honorable court that, by a decree passed in equity, cause No. 1075, rules 5, wherein John F. Shar-etts, executor of Samuel Brereton, Senior, was complainant, and the said William Brereton, Samuel Brereton, Junior, and others were defendants, said William and Samuel were required to pay to said Sharretts two sums of $3,000 each, one of $1,550, and one of $750.27, with interest and costs, which said sums, as your oratrix is informed and believes, and so charges, have been fully paid and satisfied; yet the decree aforesaid remains of record without any entry to show that payment and satisfaction has been made, as aforesaid; which said decree is prior in point of time to each and all of the said several deeds of trust upon the premises hereinbefore mentioned, given, as aforesaid, to secure the said several alleged indebtednesses hereinbefore set forth and described.

14 12. Lastly, your oratrix shows unto this honorable court that said Samuel Brereton, Junior, husband of your oratrix, as aforesaid, departed this life intestate on the 30th day of May, 1876, leaving surviving him your oratrix, his widow, and the defendant, James I. Brereton, his only heir-at-law; that at the death of said Samuel, and thence hitherto, the legal title to so much of the said hereinbefore described parts of said lots 8 and 9 as was not conveyed to said Higgins hath been and is vested in the defendant, William H. Brereton, except in so far as such title passed to the defendant, William H Ward, by means of the conveyance described in paragraph 7 of this bill; that of the equitable title to said part of lot 9 an undivided moiety remains vested in the defendant Hannay in trust for the use of your oratrix for life, and after her death in trust to be conveyed to the defendant, James I. Brereton, subject to the encumbrance described in paragraph 9 of this bill, and that of the

equitable title to said part of lot 8, an undivided moiety, subject to the same encumbrance, remains vested in said defendant,
15 Hannay, in trust to convey the same to said defendant, James I. Brereton; that the beneficial interest of said James I. Brereton is subject to the prior encumbrance described in paragraph 8 of this bill, to secure, in connection with the interest of the defendant, William H. Brereton, in said property, an alleged indebtedness of $3,500 to defendant Batchelor, administratrix as aforesaid, that the interest, legal and equitable, of the defendant, William H. Brereton, in addition to the encumbrance last mentioned, is vested in the defendant Ward, to secure to said defendant Batchelor, administratrix as aforesaid, the sum of $10,000; that prior to each and all of these several encumbrances or conveyances in trust last described, stands a decree against the defendant, William H. Brereton and Samuel Brereton, Junior, the ancestor of the defendant, James I. Brereton, for $8,300.27, interest and costs, remaining unsatisfied of record, though, as your oratrix is informed and believes, and so charges, satisfied in fact.

Your oratrix further shows unto this honorable court that, except in so far as the same may be affected by the said several incumbrances hereinbefore described, your oratrix and the defend-
16 ant, William H. Brereton, are tenants in common for the life of your orator of the equitable and beneficial interest in all of lot 9 in said square, not conveyed to said Higgins, as hereinbefore set forth, and that the defendant, William H. and James I. Brereton, are tenants in common of the remainder or reversion of said equitable interest, as also of the equitable or beneficial interest in the said described part of lot 8 in said square; that the said parts of lots 8 and 9 are covered by one building, and are wholly incapable of partition between said William H. Brereton and your oratrix during her life, or between the said William H. and James I. Brereton after her death; that all of the said several alleged indebtednesses to secure which said premises are encumbered as aforesaid are overdue; that the defendant Ward, by direction of the defendant Batchelor, administratrix as aforesaid, has advertised said property for sale under the two deeds of trust described in paragraphs 7 and 8 of this bill, as will appear from the advertisement of said sale hereto annexed, marked "Exhibit F;" that although the said deeds of trust under which said defendant Ward is about to sell said property purport to convey only the interest
17 of the defendant, William H. Brereton, and Georgiana, his wife, and of your oratrix['s] said husband, Samuel Brereton, only, yet that said defendant Ward, as your oratrix is informed and believes, and so charges, intends to sell or attempt to sell not only the interests of said William H., Georgiana, and Samuel Brereton, Junior, but the interest of your oratrix as well, claiming that the same passed to him by reason of your oratrix's signing and acknowledging the conveyance described in paragraph 8 of this bill, notwithstanding the circumstances of such signature and acknowledgment as the same are set out in said paragraph, purporting to convey a part of said lots in which as aforesaid the granters had no

interest as aforesaid; that a sale under the said deeds of trust with the title of the defendant Hannay, in the residue of said lots still outstanding, with the uncertainty as to the parts of said property covered by the prior encumbrance to the defendant Byrne still undetermined, and the decree in equity cause 1075 aforesaid still appearing unsatisfied on the record, could not but be in the highest degree destructive to the value of the property and prejudicial to the best interests of all concerned; and that it would be manifestly to the interest of all concerned that a judicial sale of said property, clear and free from all the entanglements, clouds, difficulties,
18 and embarrassments hereinbefore recited be made, and the proceeds distributed according to the respective rights of the parties entitled.

Wherefore your oratrix prays as follows:

1. That the defendants, James I. Brereton, William H. Brereton, Peter Hannay, John J. Byrne, John H. Wright, William H. Ward, Mary Ann Batchelor, John F. Sharetts, and John P. Barker, be served with process and made parties defendant hereto.

2. That a guardian *ad litem* be appointed to the infant defendant, James I. Brereton, to appear and defend the interests of said infant defendant.

3. That the defendants, Wright and Batchelor, be required to state under oath the amounts of principal and interest due to them, respectively, on account of each of the several promissory notes herein described and secured upon the property referred to in this bill.

4. That the defendants, William H. Ward and Mary Ann Batchelor, administratrix as aforesaid, be restrained by order of this
19 honorable court from proceeding to sell said property under said conveyances to said Ward in trust, & from further advertising the same.

5. That the decree in equity cause No. 1075, hereinbefore recited, may be entered satisfied by order of this honorable court.

6. That the right, title, interest, and estate of all the parties hereto in and to the said described parts of lots 8 and 9, in said square 455, be sold under decree of this honorable court, and that it be referred to the auditor of the court, or to a special auditor thereunto appointed, to state the proper distribution of the proceeds of such sale.

That said proceeds may be distributed among the several parties in interest under the direction of this honorable court, as each may be entitled.

And that your oratrix may have such other and further relief as the nature of her case may require.

SARAH A. BRERETON.

R. K. ELLIOT,
*Sol. & of Counsel for Complainant.*

20 The defendants hereto are James I. Brereton, William H. Brereton, Peter Hannay, John J. Byrne, John H. Wright, Charles Batchelor, John P. Barker, and John F. Sharretts.

I do solemnly swear that I have heard read the foregoing bill by me subscribed, and know the contents thereof; that the matters and things therein stated upon my own personal knowledge are true, and those stated on information and belief I believe to be true.

SARAH A. BRERETON.

Subscribed and sworn to before me, this 1st day of February, 1879.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clk.*

(Here follows diagram, marked page 20½, not to be printed, per stipulation of counsel.)

21 "EXHIBIT B." Filed Feb. 4th, 1879.

This indenture, made this 29th day of September, in the year of our Lord one thousand eight hundred and fifty-nine, between Samuel Brereton and Sarah Ann Brereton, his wife, of the city of Washington and District of Columbia, of the first part, and Peter Hannay, of the same place, of the second part, witnesseth: Whereas the said Samuel Brereton, party of the first part, is seized and possessed of one-half undivided interest in certain lands and tenements lying and being in the city of Washington aforesaid, and being free and unencumbered with debts, except judgments of the circuit court that may exist against him, he is desirous to assign and convey the same in such manner that the said one-half interest in said premises shall be and inure to the benefit of Sarah A. Brereton, the wife of the said Samuel Brereton, during her natural life, and to that end he doth execute this instrument of writing: Therefore, this indenture witnesseth that the said Samuel Brereton, for and in consideration of the premises, and of the sum of five dollars to
22 him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, released and conveyed, and by these presents doth hereby grant, bargain, and sell, release and convey, unto the said Peter Hannay, and to his heirs and assigns forever, all his right, title, interest, and estate, legal and equitable, of, in, and to one-half of all that certain piece or parcel of ground situate, lying, and being in the city of Washington, in the District of Columbia, and marked and described on the ground plat or plan thereof as part of lot numbered [nine] (9), in square numbered four hundred and fifty-five (455), beginning for the same at the southwest corner of said lot, and running due north, parallel with Seventh street west, fifty-four feet (54); thence due east fifty-three feet and three inches (53 3), thence south fifty-four feet (54), thence west parallel with F street north, fifty-three feet three inches (53 3), to the place of beginning; also, the northwest part of said lot nine (9), in said square four hundred and fifty-five (455), fronting twenty-one feet on Seventh street and
23 running back that width fifty-three feet three inches (53 3), together with undivided one-half interest in all and singular the improvements, privileges, hereditaments, and appurtenances to the same belonging or in any manner appertaining; to have and

to hold the said undivided one-half interest in the said lands and premises to him, the said Peter Hannay, his heirs and assigns, in and upon the trusts hereinafter mentioned and declared, and for no other use, trust, or purpose whatsoever, in trust for the sole use and benefit of Sarah A. Brereton, of the city of Washington aforesaid, and the wife of the said Samuel Brereton, during her natural life, free from all ownership, control, and obligation to and for her said husband, except so far as herein provided for, to permit the said Sarah A. Brereton to receive the rents, issues, and profits of the said undivided one-half interest of said Samuel Brereton in and to said described lands and tenements, and the same to apply to and for her sole use and benefit; and upon this further trust at any time hereafter, upon the written request of said Sarah A. Brereton and the written consent of said Samuel Brereton, to sell, dispose of, or
24 convey the said undivided pieces or parcels of ground and premises absolutely in fee-simple, in trust, or for such term or time, and for such uses and purposes, and to such person and persons, as the said Sarah A. Brereton, with the written consent of the said Samuel Brereton, may request or direct, in writing, as aforesaid.

And upon this further trust, that in the event of the death of the said Sarah A. Brereton during the lifetime of said Samuel Brereton, this trust shall cease and determine, and the pieces and parcels of ground and premises herein described and conveyed shall revert and belong to said Samuel Brereton the same as before this trust was made; and should the said Sarah A. Brereton survive the said Samuel Brereton, then, and upon and after the decease of the said Sarah A. Brereton, the said trustee, Peter Hannay, his executors, administrators, or assigns, shall hold the within-described pieces and parcels of ground and premises in trust for the use and benefit of the heirs of the said Samuel Brereton, or in trust for whom
25 soever he, the said Samuel Brereton, may direct by last will and testament or other instrument of writing, and to convey the same in fee-simple to the said heirs of Samuel Brereton within a reasonable time from and after the decease of the said Sarah A. Brereton, unless otherwise ordered by some court of law or equity having jurisdiction.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, this 4th day of October, 1859.

(Signed) SAMUEL BRERETON. [SEAL.]
(Signed) SARAH ANN BRERETON. [SEAL.]

Signed, sealed, and delivered in presence of—
(Signed) F. S. MEYER.

26 DISTRICT OF COLUMBIA, *County of Washington:*

We, John Hollingshead and F. S. Meyer, justices of the peace in and for the county aforesaid, do hereby certify that Samuel Brereton and Sarah Ann Brereton, his wife, parties to a certain deed bearing date on the 29th day of September, 1859, and hereunto annexed, personally appeared before us at our county aforesaid, the said Sam-

uel Brereton and Sarah Ann Brereton being personally well known to us as the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Sarah A. Brereton being by us examined privily and apart from her said husband, and having the deed aforesaid fully explained to her, she, the said Sarah A. Brereton, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Witness our hands and seals, this 4th day of October, 1859.

(Signed) ——— ———, *J. P.* [SEAL.]
F. S. MYER, *J. P.* [SEAL.]

27 To P. HANNAY, Esq., Trustee.

SIR: You will pay to Samuel Brereton, my husband, one-half of all the rents and profits enuring or arising from or to enure or arise from the rents or parcels of ground hereinbefore written and the improvements thereon for his benefit to the end of his natural life, without revocation.

Witness our hand and seal, this 4th day of October, 1859.

(Signed) SARAH ANN BRERETON. [SEAL.]

Attest before us—

(Signed) F. S. MEYER, *J. P.*
JOHN HOLLINGSHEAD, *J. P.*

(Pages 28 to 41, inclusive, omitted in printing, per stipulation of counsel.)

42 "EXHIBIT E."

WILLIAM H. BRERETON *et al.* to WILLIAM H. WARD.

Trust. Recorded June 15th, 1874, 11 a. m.

This indenture, made this first (1st) day of June, in the year of our Lord one thousand eight hundred and seventy-four (1874), between Wm. H. & Sam. Brereton, of the city of Washington, District of Columbia, parties of the first part, and Wm. H. Ward, of same city and District, of the second part: Whereas the said Wm. H. and Sam'l Brereton are indebted unto Charles Batchelor, su'ty, Hohokus, Bergen Co., State of New Jersey, in the just and full sum of thirty-five hundred (3,500) dollars, for which amount they have passed their certain promissory note of even date herewith, payable to the said Chas. Bachelor, su'ty, three (3) years after date, with interest at ten (10) per cent. per annum, payable, and being desirous to secure the punctual payment of said note when and as the same shall respectively become due and payable, with all interest and costs accruing thereon, do therefore execute these presents:

43 Now, therefore, this indenture witnesseth, that said parties of the first part, for and in consideration of the premises, and the sum of one dollar, in lawful money of the United States, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby

acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the party of the second part, his heirs and assigns, the following-described real estate, situate in the city of Washington, District of Columbia, to wit: Being parts of lots eight (8) and nine (9), in square No. four hundred and fifty-five (455), as the same is more particularly described by metes and bounds in a deed from Sam. Brereton to Wm. H. and Sam. Brereton, Jr., dated the second day of February, 1854, and recorded in liber J. A. S. No. 69, folio 429, '30, '31, on the land records of Washington county, District of Columbia, together with all the improvements, ways, easements, rights, privileges, appurtenances, and here-
44 ditaments to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever, either at law or in equity, of the said parties of the first part of, in, and to the said pieces or parcels of land and premises. To have and to hold the said pieces or parcels of land and premises, with the appurtenances, unto and to the use of the said party of the second part, his heirs and assigns, in and upon the trusts nevertheless hereinafter mentioned and declared, and none other, that is to say, in trust to permit the said parties of the first part, their heirs or assigns, to use and occupy the said described premises, and the rents, issues, and profits thereof to take, have, and apply to and for their and their sole use and benefit, until default be made in the payment of said note, or any instalment of interest due thereon, or any proper cost, charge, commission, half commission, or expense in and about the same; and upon the full payment of all of said note, and the interest thereon, and all other proper costs, charges, commis-
45 sions, half commissions, and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said parties of first part, their heirs or assigns, at their cost. And upon this further trust, that upon default being made in the payment of the said note, or any instalment of interest due thereon, or any proper cost, charge, commission, half commission, or expense in and about the same, then, and at any time thereafter, to sell the said pieces or parcels of land and premises at public auction, in front of the premises, after at least 30 days' notice of the time, place, and terms of sale by advertisement in some one or more of the newspapers printed and published in the said city of Washington, which said terms of sale shall be as follows, viz: The amount of indebtedness secured by this deed of trust unpaid, with the expenses of sale, in cash, and the balance at six and twelve months, for which the notes of the purchaser, bearing interest from the day of sale and secured by a deed of trust on the property sold, shall be taken. A deposit of — dollars shall be required of the purchaser at the
46 time of sale, and all conveyancing and revenue stamps shall be at the expense of the purchaser. And upon this further trust, upon full compliance with the terms of sale to convey the property sold in fee-simple to the purchaser or purchasers thereof, at his, her, or their cost and expense, and without any liability to see to the application of the purchase-money, and out of the proceeds

of said sale or sales, first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of five (5) per cent. on the amount of said sale or sales; secondly, to pay whatever may then remain unpaid of the said note, and the interest thereon, whether the same shall be due or not; and, lastly, to pay the remainder, if any, to said Wm. H. and Sam. Brereton, their heirs or assigns. And the said —— do hereby covenant with the said part- of the second part, — heirs and assigns, that all taxes upon the said land shall be duly paid, and that the building on said parcel
47 of land shall be kept insured, during the continuance of this trust, in some good and responsible fire insurance company or companies, to the satisfaction of the part- of the second part, in the sum of —— dollars, for the benefit of the debt hereinbefore described, and the policy or policies of insurance be assigned to the said party of the second part, as trustee under these presents; and further, that in case the said heirs or assigns shall fail to pay taxes or to keep said property so insured then the taxes may be paid and the property be insured for the amount aforesaid by the legal holder of the note before mentioned, and the amount of taxes and premium paid shall be considered a part of the expense of said note secured hereby, in default of payment of which the said part- of the second part shall have power to sell said property hereby conveyed as aforesaid, and shall dispose of the proceeds of sale as hereinbefore provided. And it is further agreed that if the property shall be advertised for sale under the provisions of the deed, and not sold, then the
48 said trustee shall be entitled to one-half the commission above provided to be computed on the amount of the debt hereby secured.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals, on the day and year first hereinbefore written.

WM. H. BRERETON. [L. S.]
SAM. BRERETON. [L. S.]
S. A. BRERETON. [SEAL.]

Signed, sealed, and delivered in the presence of—
B. W. FERGUSON.

DISTRICT OF COLUMBIA, }
*County of Washington,* } *ss:*

I, B. W. Ferguson, a justice of the peace in and for the county aforesaid, do hereby certify that W. H. Brereton, Samuel Brereton, and Sarah A. Brereton, parties to a certain deed, bearing date on the first (1st) day of June, A. D. 1874, and hereto annexed, personally appeared before me in the county aforesaid, the said W. H. Brereton, Samuel Brereton, and Sarah A. Brereton, his wife, being personally known to me to be the persons who executed the said
49 deed, and acknowledged the same to be their act and deed; and the said Sarah A. Brereton being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed,

and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and seal, this 23d day of June, A. D. 1874.

B. W. FERGUSON, [SEAL]
*Justice of the Peace.*

50 EXHIBIT F.

*Auction Sales.*

B. H. Warner, Real Estate Auctioner.

Trustee's sale of very valuable improved property, being the large four-story and mansard roof building, at the northeast corner of Seventh and F streets northwest, occupied by Wright's saloon, Milan & Wilkin's book store, and for offices.

By virtue of a deed of trust dated February 1, 1873, and recorded in liber 726, folio 304, of the land records of the District of Columbia, and also by virtue of a deed of trust dated June 1, 1874, and recorded in liber No. 756, folio 18, one of the land records of the District of Columbia, I will sell at public auction, in front of the premises, to the highest bidder, at 4 o'clock on Monday, February 24, 1879, part of lots eight (8) and nine (9), in square four hundred and fifty-five (455), lying in said city of Washington, District of Columbia, and being improved by the large four-story and mansard roof building, at the northeast corner of Seventh and F streets, near the Post Office and Interior Departments. A plat giving an exact description of the property will be exhibited at the sale. This property, from its location, presents a tempting opportunity for investment to large capitalists.

51 Terms: Five thousand dollars cash, and the balance in six, twelve, eighteen, twenty-four, and thirty-six months, with interest at 6 per cent., payable semi-annually, and secured by a deed of trust upon the property, containing a covenant for the insurance for the benefits of the deferred notes until their payment, and also for the payment of taxes. Five hundred dollars to be paid at the sale when the property is struck off. In case the terms are not complied with in ten days after the sale the trustees reserves the right to resell the property at the risk and cost of the defaulting purchaser after five days' advertisement in the Evening Star. All conveyancing and recording at the purchaser's cost.

WM. H. WARD, *Trustee.*

52 *Restraining Order. Filed 4th, 1879.*

The defendant is hereby restrained, as prayed in the within-mentioned bill, until further order, to be made, if at all, after a hearing, which is fixed for the 8th day of Feb., 1879, of which take notice.

By the court: MACARTHUR, *Justice.*

53 *Subpœna to Answer. Filed Feb.* 4, 1879.

In the Supreme Court of the District of Columbia, the 4th day of February, 1879.

SARAH A. BRERETON, Complainant,
*against*
JAMES I. BRERETON *et al.*, Defendant. } No. 6617. Eq'y Dock. 19.

The President of the United States to James I. Brereton, Mary Ann Batchelor, adm'r'x of Charles Batchelor, deceased; William H. Brereton, Peter Hannay, John J. Byrne, John H. Wright, William H. Ward, John P. Barber, and John F. Sharetts, executor, defendant:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill this day filed, and entitled as above, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*
By C. ROBINSON, *Ass't Clerk.*

Memorandum: That the defendant, herewith served, is to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

54 *Marshal's Return.*

Not to be found: James I. Brereton, Mary Ann Batchelor, and John F. Sharrets. Sum'd and served notice of injunction on Wm. H. Ward Feb'y 4, 1879, and summoned all the others Feb'y 7th, 1879.

F. DOUGLASS, *Marshal.*

55 *Ans. of Wm. H. Brereton. Filed Mar. 28th,* 1879.

In the Supreme Court of the District of Columbia, holding an Equity Court.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et al.* } No. 6617. Equity. Doc. 19.

The separate answer of William H. Brereton, one of the defendants in the above-entitled cause, to the bill of complaint filed against him and others.

This defendant, for answer to said bill, or to so much and to such parts thereof as he is advised is material and proper for him to make answer unto, answers and says:

I say that the residences of the defendants named in the bill are

all properly stated, as I believe, except that the said John F. Sharretts is a resident of the State of Virginia.

1. I believe the allegations and statements contained in the first paragraph of the bill to be true.

2. I admit that the allegations contained in the second paragraph of the bill are true, and that the said twenty-one (21) feet north of said lot nine (9) was conveyed as stated.

56 3. I admit that the conveyance as stated in the third paragraph of the bill, on the second (2d) day of February, 1854, was made as alleged; but whether it is inoperative or without effect is matter of law, as I am advised, and of which I have no knowledge, and I submit the same to the honorable court.

4. I admit the allegations and statements contained in the fourth paragraph of the bill, as I am at present informed, to be true.

5. It is true, as stated in fifth paragraph of the bill, that on the 29th day of October, A. D. 1859, the plaintiff and her husband, the said Samuel Brereton, Junior, and myself and Georgiana, my wife, together with Peter Hannay, made the conveyance mentioned to the said William Higgins in fee simple.

6. I admit that the conveyance of the 7th day of August, 1873, as mentioned in the sixth paragraph of the bill, was made to John J. Byrne to secure the said John W. Wright in the sum of $6,000.00 as stated.

7. I believe that the conveyance bearing date on the first day of February, 1873, as mentioned in the seventh paragraph of the bill, was made as stated for the purpose of securing to Charles

57 Batchelor the sum of $10,000.00, with 8 per cent. interest; but I say that the said sum of money was a loan gotten upon the joint property of myself and the said Samuel Brereton, Junior, and for the benefit of the same, said property being the part of lot nine (9) in said square four hundred and fifty-five (455); and, as I am advised, the said sum being expended in the improvement of the said property, the same should in equity be paid out of the said property in litigation, and that I ought not to be liable for more than one moiety thereof. And I further submit to the honorable court, as I am advised, that the said deed is not inoperative by reason, as alleged, of being subject to another prior deed of trust.

8. I admit that the conveyance as marked by Exhibit E, mentioned in the eighth paragraph of the bill, was made as and for the purpose therein stated.

9. I believe that the conveyance named in the ninth paragraph of the bill is correctly stated, except that, as I am informed, the said grantor Hannay had no power to convey the said part of lot 8 as described.

58 10. I believe that the said Charles Batchelor has deceased, as stated in the tenth paragraph of the bill, but, as I am informed and believe, and so aver, that he did not die intestate, but on the contrary that he executed a will which is still in existence & force.

11. As stated in the eleventh paragraph of the bill, there was a decree passed in this court, the same being in equity No. 1075, at the suit of John F. Sharetts, executor of Samuel Brereton, Senior, against

me, Samuel Brereton, Junior, and others for the recovery of the sum of $8,300.27, made up of $6,000, $1,550, and $750.27; the entire sum thereof, I state, together with the interest and costs, was paid by me and the said Samuel Brereton, Junior, out of the property sold to William Higgins (mentioned in paragraph No. 5 of this bill), in settlement of the estate of the late Samuel Brereton, Senior, with the said executor Sharretts.

12. In answer to the matters alleged in the twelfth paragraph of the bill, I admit the conveyances mentioned and referred to as stated in paragraph seven (7) and nine (9) of the bill, except that the said part of lot eight (8) was not conveyed to said Hannay; also
59 that the beneficial interest of the said James I. Brereton is subject to encumbrance described in paragraph eight (8) of the bill in connection with me, and that both interest are subject to the indebtedness of $3,500 to said Batchelor, and that the legal and equitable title to said part of said lot nine (9) is in defendant, Wm. H. Ward, as trustee, to secure the additional sum of $10,000 to said Batchelor; but I say that it is not true, as stated, that the said parts of lots eight (8) and nine (9) are covered by one building; there is no building on said part of said lot eight (8) mentioned in the bill. It is true that the decree for $8,300.27 mentioned was obtained as stated, and that as far as I personally know the same has not been entered satisfied upon the record; that the said amount was paid by me as hereinafter stated. I do not admit that the said property is incapable of division; on the contrary, I say that the building on said part of lot nine (9) is so constructed that an equal portion might be assigned to two persons. It is true, as stated in this last-mentioned paragraph, that the said debts, which are encumbrances
60 on said premises, are overdue, and that the said property was advertised for sale as alleged.

And having answered the statements and allegations of the said bill so far as I am advised that it is necessary for me to make answer unto, I state that I hold a promissory note of the said Samuel Brereton, Jr., deceased, for $1,000, which I claim should be satisfied from the proceeds of the sale of said property (should such sale be made), after payment of encumbrances thereon, the said note bearing date February 1st, 1873, and payable three years after date to my order, with interest at eight per cent., interest payable monthly; that interest on said note was paid up to February 1st, 1876. A copy of said note is herewith filed, marked W. H. B., No. 1, as part of this answer, together with the endorsements thereon, the original being ready to be produced when properly called for.

And I further claim that I am legally and equitably, as I am advised, entitled to a fair compensation or percentage for the
61 management and care of the entire property, collecting and paying over rents, paying taxes and assessments, and in paying out funds for improvements, and other services in and about the same, from the 2d day of February, 1854, down to the present time, the said Samuel Brereton, Junior, never having performed any of these acts or services, and I having transacted the entire business alone; that such percentage or compensation should be rated ac-

cording to the pay to agents, one-half of which, to be ascertained by an account to be taken before the proper officer, I ought to be allowed.

WILLIAM HENRY BRERETON.

JOHN E. NORRIS,
*Sol'r for W. H. Brereton.*

I do solemnly swear that I have heard read the answer by me subscribed, and know the contents thereof, and that the facts therein stated as of my own knowledge are true, and that the facts therein stated on the information of others I believe to be be true.

WM. H. BRERETON.

Subscribed and sworn to before me, on the 27th day of March, A. D. 1879.

[SEAL.] J. W. HAMILTON JOHNSON,
*Notary Public.*

62 *Ans. M. A. B. Filed May 17th*, 1879.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON *vs.* JAMES I. BRERETON *et al.* } No. 6617. Equity.

The answer of Mary A. Batchelor to the bill of complaint, answering so much of the said bill as she is advised it is material and competent for her to answer, she says:

1. That she is a citizen of the United States, and a resident of the State of New Jersey; that she is the widow of Charles Batchelor, who departed this life on the 6th day of October, A. D. 1878, having first executed his last will and testament, which was duly admitted to probate and recorded in the surrogate's office of the county of Bergen, New Jersey, and in and by the said last will and testament he nominated and constituted this respondent as the sole executrix thereof, and that the orphans' court for Montgomery county, Maryland, has issued to her letters testamentary upon the said estate, she having duly qualified as such executrix, and she files herewith a certified copy of the said letters (marked Exhibit M. A. B.)

63 2. Among the effects of the said testator which came into her hands were the two notes described in paragraphs seven and eight of said bill; the consideration for which notes was the amount expressed respectively upon their face, advanced to the parties in the same named by her said husband, Charles Batchelor, upon the security of the real estate in the deeds of trust mentioned, in the said paragraphs seven and eight, whereby she claims the undivided moiety of Wm. H. Brereton was conveyed to said Wm. H. Ward, as trustee, to secure the note for ten thousand dollars, and the entire title (as well that of said William as that of the complainant and Samuel, Junior) was conveyed to said Ward, as trustee, to secure the note for three thousand five hundred dollars, and that the complainant is

estopped in law and equity from asserting her pretended claim in relation to the last-named trust.

3. Respondent says that no sum whatever has been paid on either of said notes on account of the principal; that the interest has been paid on the ten thousand-dollar note up to second day of July, eighteen hundred and seventy-six, and on the three thousand five
64 hundred-dollar note up to August the twenty-fourth, eighteen hundred and seventy-six, and that after the death of her husband there was paid to respondent, on account of interest, in October, 1878, the sum of one hundred dollars.

4. On account of the non-payment of the said notes and interest respondent directed the said Wm. H. Ward, trustee, to enforce the said deeds of trust by making a sale of the property mentioned in the same, and he was so proceeding by proper advertisement when he was restrained by the order of this honorable court. She is desirous of speedily collecting the amount of said notes and interest in order that she may close her accounts as executrix and settle the same.

5. This respondent denies that the legal effect of the several conveyances mentioned in the bill is as claimed by the complainant; but she avers that the true construction of said conveyances rests in the said Ward, as trustee, to secure the said notes for $3,500.00, the entire title to said land, and to secure the note for $10,000.00, the undivided moiety of said William H. Brereton therein.

65 And having answered, she prays to be hence dismissed, with her costs.

MARY ANN BATCHELOR.

BRADLEY & DUVALL,
*For Respondent.*

I do solemnly swear that I have read the foregoing answer by me subscribed, and know its contents, and that the facts therein stated upon my own knowledge are true, and those stated upon information and belief I believe to be true.

MARY ANN BATCHELOR.

Subscribed and sworn to before me, this 13 day of May, A. D. 1879.

[SEAL.] GARRET G. VAN DIEN,
*Notary Public.*

Answering plaintiff's amended bill, this defendant admits the averment thereof, and for further answer she reaffirms the matters and things on the foregoing answer contained.

BRADLEY & DUVALL, *Solicitors.*

66 *Ans. W. H. Ward. Filed May* 17, 1879.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et al.* } No. —. Equity.

The answer of William H. Ward, one of the defendants.

Answering so much of said bill as he is advised it is material for him to answer, he says:

He is a resident of the said District, and is the trustee named in the two deeds from Wm. H. Brereton & Sam'l Brereton to secure the two notes in favor of Chas. Batchelor mentioned in the bill; that under directions from Mrs. M. A. Batchelor, executrix of said Chas. Batchelor, the holder of said notes, he had advertised the property for sale under the terms of and in accordance with the requirements of said deeds of trust on account of the non-payment of said notes and the interest on the same, and that he was restrained from further proceeding by the order of this honorable court, and that he is ready and willing to execute the said trusts reposed in him
67 by the said deeds when and as the court shall direct. And having answered, he prays to be hence dismissed.

WM. H. WARD.

Subscribed and sworn before me, May 17, 1879.

R. J. MEIGS,
*Clerk S. C. D. C.*,
By R. J. MEIGS, JR., *Ass't.*

68 *Order Appointing Guardian ad litem. Filed Jun.* 17, 1879.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et als.* } 6617. Equity.

The defendant, James I. Brereton, having this day appeared in open court, and being an infant, it is thereupon, this 17th day of June, A. D. 1879, on motion of complainant's solicitor, ordered that B. G. Lovejoy, Esq., be, and he hereby is, appointed guardian *ad litem* of said infant defendant, to make answer for him in the premises.

By the court:

MACARTHUR, *Justice.*

69 *Amended Bill. Filed Jun. 26th*, 1879.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et al.* } 6617. Equity.

The complainant, by leave of the court first had and obtained, and

by consent of defendants in interest, amends hereby her original bill in this cause, as follows:

The defendant, Mary Ann Batchelor, is the sole executrix of the estate of Charles Batchelor, deceased, and has duly qualified as such before this honorable court holding a probate court in and for the District of Columbia.

R. K. ELLIOT,
*For Complainant.*

We consent to the filing of the above amendment to the bill of complaint.

JOHN E. NORRIS,
*Sol. for W. H. Brereton.*
BRADLEY & DUVALL,
*For M. A. Batchelor.*
EDWARDS & BARNARD,
*For Def't Wright.*

Let this amended bill be filed.

MACARTHUR, *Justice.*

70 *The Answer of the Defendant, J. H. Wright. Filed June* 30, 1879.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et als.* } No. 6617. Equity.

For answer to so much of the bill as he is advised it is in any way necessary or material for him to answer the said defendant says:

1. He admits the execution of the deed of trust, as stated in the 6th paragraph of the bill, dated August 7, 1873, and being original of Exhibit "C," filed in this cause, and says that the same was executed for the purpose of securing to this defendant the sum of six thousand dollars ($6,000), with interest thereon at the rate of ten per centum per annum, payable semi-annually until paid.

That he loaned the said sum of $6,000 to Samuel Brereton on the 7th day of August, 1873, and said Brereton gave this defendant his promissory note therefor, of that date, payable three years after date, with interest at ten per cent. per annum, payable semi-annu-
71 ally; and the said Samuel Brereton and the complainant executed the said deed of trust to secure that note.

That he accepted the said note and deed of trust as security for the said loan, believing that the said Samuel Brereton and the complainant had then a perfect title to the undivided one-half of the said property intended to be conveyed thereby, with full power to execute such conveyance, and had no knowledge in fact, at that time, of the deed in trust to Peter Hannay, of September 29, 1859, shown by complainant's Exhibit "B," filed herein.

He is advised and believes, and therefore alleges, that the said deed of trust, in equity and good conscience, did transfer and convey to the said grantee, the defendant, John J. Byrne, the interest of

the complainant and her said husband in and to the real estate described in the bill, as security for his said loan; but he admits that there was an error made by the scrivener in the preparation of the said deed of trust, a purely clerical mistake, in this, that
72 a line running south from the north end of lot 8, on the extreme eastern boundary of the said tract intended to be conveyed, and particularly described in the bill herein, should have extended south 64 feet 5½ inches before going west 2 feet and 6 inches, instead of stopping at 56 feet and (10) ten and a half (½) inches, as erroneously described in the said deed of trust. With this exception, the said deed of trust contains the correct description of the parts of lots 8 and 9, in said square 455, intended to be conveyed as security as aforesaid.

2. He admits the execution of the deed of trust dated January 15, 1876, and referred to and described in paragraph nine (9) of the bill, and says that the same was executed for the purpose of conveying the property intended to be conveyed as security as therein stated, and except that an erroneous description is made in the said deed, in the same manner and particular that the clerical error was made in the prior deed of trust of August 7, 1873, plaintiff's Exhibit "C," the same so conveys said property.

That the said deed of trust of January 15, 1876, was exe-
73 cuted to secure the same loan of six thousand dollars made by this defendant to Samuel Brereton August 7, 1873, no part of which had ever been repaid to this defendant, and has not yet been repaid. That he had learned of the erroneous description in the prior deed of trust, and also of the fact of the deed in trust to the said Hannay, as shown in complainant's Exhibit B, and he was desirous of having the same corrected by a new deed of trust, properly executed; and the said Samuel Brereton and the complainant and the said Peter Hannay all were willing to make such conveyance as this defendant was then advised it was necessary for him to have in the premises for his protection and the security for the said loan. That thereupon the interest due on the said loan was paid to January 15, 1876; a new note was drawn and signed by said Samuel Brereton, bearing date January 15, 1876, for six thousand dollars, payable to this defendant, or order, in three years after date, with interest at the rate of ten per cent. per annum until paid, payable semi-annually, and the said deed of trust
74 executed to secure the same to this defendant.

That the said deed, as recorded in liber 805, folio 371, is refer-ed to as part of this answer.

That there is now due and unpaid to this defendant upon the said note the sum of six thousand dollars ($6,000), with interest thereon at the rate of ten per cent. per annum, from the 15th day of January, 1879, until paid.

This defendant is willing that said property be sold under the order of this court, and he asks that his said indebtedness may be first paid from the proceeds of the undivided one-half interest of the said Samuel Brereton, Peter Hannay, and the complainant, in

and to the property intended to be conveyed by the said deeds of trust.

3. He is informed and believes, and therefore avers, that the decree in equity cause No. 1075, rules 5, in favor of John F. Sharretts, referred to in paragraph 11 of the bill, has been fully settled and satisfied, and for evidence thereof, he refers to equity cause No. 408, docket 7 of this court, which appears to be a continuation of
75 the said suit of Sharretts *vs.* Brereton, No. 1075, rules 5.

4. He further says, that at the time of the execution of the deed of trust of January 15, 1876, he had no knowledge, in fact, of the deed of trust, described in the 8th paragraph of the bill, given by William H. Brereton, Samuel Brereton, and the complainant, to the defendant Ward, to secure $3,500 to Charles Batchelor.

That he believes, and therefore avers, that at the time of the execution of this last-named deed of trust, the said Charles Batchelor well knew of the loan made by this defendant of the said $6,000, and well knew that so far as the undivided one-half interest in the said property owned by said Samuel Brereton and complainant, that he was taking the said security as a second incumbrance, and subject to the said trust of August 7, 1873, to secure this defendant.

That the said transaction of January 15, 1876, ultimating in the deed of trust and new note of that date, was in fact nothing more than an arrangement to extend and renew the said loan of
76 $6,000, no part of which was repaid to this defendant, and he is advised that, in equity and justice, he is still entitled to have the same priority as against the said trust of June 1, 1874, to secure the said $3,500, that he would have had under the original trust of August 7, 1873.

He therefore asks, that in making distribution of the proceeds arising from a sale of the said property, that he may be fully protected in this priority, and have his said loan and interest and costs fully paid from the proceeds of the undivided interest in the said property so conveyed, and intended to be conveyed, by the said deed of trust of August 7, 1873, before any payment is made to the defendant, Mary Ann Batchelor, as the personal representative of the estate of said Charles Batchelor, from the undivided one-half interest aforesaid.

JNO. H. WRIGHT.

DISTRICT OF COLUMBIA, *ss:*

John H. Wright, being duly sworn, says: That he has
77 heard the above and annexed answer, by him subscribed, read over to him, and that he knows the contents thereof, and the facts therein stated of his own knowledge are true, and those therein stated on information and belief he believes to be true.

JNO. H. WRIGHT.

Subscribed and swore to before me, this 28th day of June, 1879.

[SEAL.] MILTON C. BARNARD,
*Notary Public.*

78 *Answer of John J. Byrne. Filed Jul. 7th*, 1879.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAMES J. BRERETON *et al.* } No. 6617. Equity.

1. The defendant, John J. Byrne, says: That he admits the allegations of the bill so far as the same relates to himself, to wit: that he is the sole trustee named in the deed of trust of August 7, 1873, described in the 6th paragraph of the bill, and that he is one of the trustees named in the deed of trust of January 15, 1876, described in the 9th paragraph of the bill. He further says that he is informed and believes that the said two deeds of trust were made to secure one and the same loan of $6,000, loaned by John H. Wright to Samuel Brereton, and that the same has not been repaid. He consents that the said property may be sold under the decree of the court, if the court should deem such sale to be for the interest
79 of the parties beneficiary under the several deeds of trust described in the bill, and, having answered, he asks to be hence dismissed, with costs, &c.

JOHN J. BYRNE.

Subscribed and sworn to before me, this 7th day of July, 1879.
MILTON C. BARNARD, [SEAL.]
*Notary Public.*

EDWARDS & BARNARD,
*Solicitors for Def't.*

80 *Answer of Defendant, John P. Barker. Filed Jul.* 7, 1878.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAMES J. BRERETON *et al.* } No. 6617. Equity.

1. For answer to the bill, so far as the same relates to himself, the said defendant says: He admits the allegations thereof; that is to say, he admits that he is one of the trustees named in the deed of trust described in the 9th paragraph of the bill, dated January 15, 1876.

He further says that he consents to the said property being sold in such manner as the court may deem best for the interest of all parties secured therein.

And, having answered, he asks to be hence dismissed, with costs, &c.

J. P. BARKER.

Subscribed and sworn to before me, this 7th day of July, 1879.
MILTON C. BARNARD, [SEAL.]
*Notary Public.*

EDWARDS & BARNARD,
*Soticitors for Def't.*

81 *Ans. James J. Brereton, by Guardian ad litem. Filed Aug.* 30, 1879.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAMES J. BRERETON. } Eq. 6617. Doc. 19.

The answer of James J. Brereton, a minor, by his guardian *ad litem*, B. G. Lovejoy.

This defendant cannot admit any of the matters and things alleged in the bill of complaint in this cause filed, and being an infant of tender years, submits his rights to the protection of the court.

B. G. LOVEJOY,
*Guardian ad litem to James J. Brereton, Junior.*

Sworn to and subscribed before me, this 30th day of August, A. D. 1879.

[SEAL.] J. D. COUGHLAN,
*Notary Public.*

82 *Ans. Peter Hannay. Filed Sept. 6th*, 1879.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et al.* } 6617. Eq. Doc. 19.

The answer of Peter Hannay, one of the defendants, answering so much of said bill as he is advised it is material for him to answer, says:

He is a resident of the District of Columbia, and is the trustee named in the deed of trust of 29th September, A. D. 1859, mentioned in the 4th papagraph of the bill; that as such trustee he did execute the conveyance to Wm. Higgins mentioned in paragraph (5) of the bill; that of the allegations of fact & legal inferences contained in paragraph (6) of the bill, he has no other knowledge than that to be derived from said paragraph, which he neither admits nor denies, but submits to the court, and that he is ready & willing to execute all the trusts reposed in him by the deed of trust of 29th September, 1859 aforesaid, whenever directed, in the manner therein provided for; and having fully answered he prays to be hence dismissed, &c.

P. HANNAY, *Trustee.*

83 *Replication to Defendants' Ans. Filed Sep. 16th*, 1870.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et al.* } 6617. Eq. Doc. 19.

The plaintiff joins issue with the defendants, James I. Brereton,

William H. Brereton, Peter Hannay, John J. Byrne, John H. Wright, William H. Ward, Mary Ann Batchelor, and John P. Barker, and Peter Hannay, upon their answers in the said cause filed.

ELLIOT & ROBINSON,
*For Plaintiff.*

(Pages 84 to 96, inclusive, omitted in printing, per stipulation of counsel.)

97 *Decree of Sale. R. W. Tyler, Trustee, to sell. Filed Dec.* 10, 1879.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON, Complainant,
*vs.*
JAMES I. BRERETON *et al.*, Defendants. } No. 6617. Doc. 19.

This cause coming on to be heard at this term, and having been argued by counsel, and duly considered—

It is thereupon, this 10th day of December, A. D. 1879, adjudged, ordered, and decreed that all the right, title, interest, and estate of the parties to this cause in and to parts of lots numbered, respectively, eight (8) and nine (9), in square numbered four hundred and fifty-five (455), in the city of Washington, District of Columbia, bounded and described as follows, viz: Beginning for the same at the south-west corner of said square and running thence north along the line of Seventh (7th) street N. W. thirty-one (31) feet; thence east thirty-three (33) feet three inches (3 in.); thence north eight (8) feet; thence east twenty (20) feet; thence north sixty-two (62) feet ten and one-half inches (10½ in.); thence east 7 feet; thence south sixty-

98 four (64) feet five and one-half (5½) inches; thence west two (2) feet and six (6) inches; thence south six (6) feet; thence west four (4) feet and six (6) inches; thence south along the east line of lot numbered nine (9) to F street, and thence fifty-three (53) feet and three inches to the place of beginning, together with all and singular the improvements thereon and appurtenances thereunto belonging, be sold at public auction to the highest bidder, and that Richard W. Tyler be and he hereby is constituted and appointed trustee to make said sale, and he shall proceed as follows:

He shall first file in this cause his bond to the United States of America, with one or more sureties, to be approved by this court or one of the justices hereof, in the penal sum of twenty thousand dollars.

Conditioned for the due and faithful discharge of his duty under this decree, or under any future order or decree in this cause.

He shall then advertise said above-described real property for sale at public auction as aforesaid in one or more newspapers

99 printed and published in the city of Washington for at least fifteen consecutive circular days prior to the day of sale, giving notice thereby of the time, place, and terms of sale; which terms shall be one-fourth of the whole purchase-money in cash, and

the residue in four equal instalments, payable, respectively, with interest, six (6), twelve (12), eighteen (18), and twenty-four (24) months after the day of sale, to be evidenced by the promissory notes of the purchaser, and secure by retaining the title of the real property sold until full payment of each and all of said notes and the final ratification of the sale by the court.

And upon full payment of said notes (which the purchaser is hereby required to deposit in the registry of this court) and the final ratification of the sale the trustees aforesaid shall convey to the purchaser or purchasers, his, her, or their heirs or assigns, the real property aforesaid, with all the right, title, interest, and estate of the parties to this cause in and to the same.

And as soon after said sale as may be convenient the
100 trustees shall make report of the same and of the fairness thereof to this court under oath.

It is further ordered, adjudged, and decreed that the rights of the several parties in interest to the proceeds of said sale shall be postponed until the coming in of the report thereof, and the final hearing of the cause on the distribution of the fund.

And it is further ordered and decreed that the said trustee be, and he is hereby, authorized to pay all taxes legally due or assessed against said property, or any portion thereof, at the time of sale, out of the proceeds of sale, and that he be allowed credit therefor in his trustee's account.

By the court: MACARTHUR, *Justice.*

101 *Trustee's Bond. Filed Dec.* 13, 1879.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON, Complainant,
*vs.*
JAMES I. BRERETON *et als.*, Defendant-. } 6617. Eq. Doc. 19.

Know all men by these presents, that we, Richard W. Tyler and William W. Rapley, are held and firmly bound unto the United States of America in the full sum of twenty thousand dollars ($20,000), current money of the said United States, to the payment of which we do hereby bind ourselves and each of us, our, and each of our, heirs, executors and administrators, jointly and severally, firmly by these presents. Signed and sealed by us and each of us, and dated this 13th day of December, A. D. 1879.

Whereas the above bounden Richard W. Tyler has, by decree passed this day in the above-entitled cause, been constituted and appointed trustee to make sale of the real property in said decree mentioned and described, now the condition of this obligation is such that if the above bounden Richard W. Tyler shall faithfully
102 and honestly discharge his duty as trustee under said decree, and under any future order or decree in said cause, and shall pay over any and all sums of money that may come into his hands by virtue of his office as trustee aforesaid, then this obligation shall

be null and void, otherwise it shall be and remain in full virtue and effect.

In testimony whereof, the above-named obligors have hereunto set their hands and seals the day and year first hereinbefore written.

R. W. TYLER. [SEAL.]
W. W. RAPLEY. [SEAL.]

Signed & sealed in presence of—
W. H. RAPLEY.
J. B. KELSEY.

Approved Dec. 13, 1879.

MACARTHUR, *Justice.*

103 *Order to Enter Appeal. Dec. 27th, 1879.*

December 27th 1879. The clerk will enter an appeal to the general term in this cause.

JOHN E. NORRIS,
*Solicitor for Wm. H. Brereton.*

Appeal as ordered entered and cause calendared in general term by the clerk.

104 *Undertaking for Appeal by Wm. H. Brereton to Gen'l Term. Filed Jan. 6th, 1880.*

In the Supreme Court of the District of Columbia, the —— day of ——— 18—.

SARAH A. BRERETON, Plaintiff,
[*vs.*]
JAMES I. BRERETON, WM. H. BRERETON, *et als.*, Def't. } No. 6617. Equity.

The defendant, William H. Brereton, having appealed to the general term from the decree pronounced herein on the 10th of December, 1879, in the equity court, and Albert E. H. Johnson, surety for said appeal, for themselves, and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment, which they agree may be pronounced against all of them to the amount of two nundred and fifty dollars.

WM. H. BRERETON, *Appellant.*

Approved:

JAMES, *Justice.*
A. E. H. JOHNSON, *Surety.*

105 *Trustee's Report. Filed June 8, 1880.*

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et als.* } Equity.

The undersigned, trustee in the above-entitled cause, respectfully

reports to the court that, after having filed his bond as required by the decree herein, he advertised the real property in the proceedings mentioned and described for sale at public auction on Monday, the 5th day of January, A. D. 1880, at 4 o'clock p. m., in front of the premises. Said advertisement was duly published in the Evening Star and Washington Post, daily for fifteen consecutive days, and also notice by postal card; and on the day of sale the trustee attended and offered said real property at public auction. And after due diligence and effort to sell the same the highest bid obtained was $26,200, which the trustee deemed inadequate, and, therefore, withdrew the property from sale for the present. This action was taken with the knowledge and assent of the counsel of the complainant, and also of the counsel for the defendant Batchelor.

106

The bills for advertising, amounting to $106$\frac{45}{100}$, and $10 auctioneer's fees, are herewith filed.

Respectfully submitted,

R. W. TYLER, *Trustee.*

Subscribed and sworn to before me, this 8th day of January, A. D. 1880.

R. J. MEIGS,
*Clerk S. C. D. C.*
By R. J. MEIGS, JR., *Ass't.*

WASHINGTON, D. C., *Dec.* 20, 1879.

Capt. R. W. Tyler, Trustee, to Gibson Brothers, Dr.
1012 Pennsylvania Avenue.

For printing 200 notices to capitalist's sale of lots on postal cards ---------- $3 75

Received payment,

GIBSON BROS.,
Per WM. ROSS.

107

WASHINGTON, D. C., ——, 187—.

Mr. R. W. Tyler, Trustee, to the Washington Post, Dr.

For advertising, as follows:

1879, Dec. 16. Chancery sale Brereton's property, cor. 7 & F Sts., 13 squares, till Jan. 5, '80 ---------- 52 00

Received payment for company.

——— ———.

WASHINGTON, D. C., 8 *Jan'y*, 1880.

R. W. Tyler, to The Evening Star Newspaper Co., Dr.

To advertising in The Evening Star, as follows:

Dec. 16. Chan. sale, 13¼.17 ---------- 51 74

Received payment for Co.

——— ———.

*Statement.*

THOMAS DOWLING, Auctioneer.

WASHINGTON, D. C., 8 *Jan'y*, 1880.

Mr. R. W. Tyler, Wash'n, D. C., Dr.

Jan'y 5. To offering property, cor. 7th & F Sts. N. W.---- 10 00

(Pages 108 to 126, inclusive, omitted in printing, per stipulation of counsel.)

127 *Decree. Filed Mar. 19th*, 1880.

In the Supreme Court of the District of Columbia. In General Term, January, 1880.

BRERETON *vs.* BRERETON *et al.* } No. 6617. Equity.

This cause came on to a hearing on the record from the special term of the court, and was argued by counsel, upon consideration whereof and the consent of counsel filed in the cause, it is adjudged, ordered, and decreed, on this 19th day of March, A. D. eighteen hundred and eighty, that the decree entered below be, and the same is, hereby modified, as follows:

1st. The terms of sale shall be one-fourth in cash, and the residue of the purchase-money be divided into four equal payments at nine, eighteen, twenty-seven, and thirty-six months, respectively, from date of sale, with interest.

2d. That the purchaser, on complying with the terms of sale, to receive a deed and execute his four promissory notes in equal
128 sums, and give a deed of trust upon the premises to secure the payment of the same.

3d. And it is further ordered, that the residue of the decree below remain and be, and the same hereby is, affirmed.

By order: D. K. CARTTER,
*Ch'f Justice.*

We consent to this decree.

EDWARDS & BARNARD,
*Solicitors for Def'ts Wright and Barker.*

We consent.

R. K. ELLIOT,
*For Complainant.*

BRADLEY & DUVALL,
*For Mrs. Batchelor.*

JOHN E. NORRIS,
*Sol'r for Wm. H. Brereton.*

129 *Trustee's Report of Sale, April 9th,* 1880. *Filed April 23d,* 1880.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON, Complainant,
*vs.*
JAMES I. BRERETON *et al.*, Defendants. } No. —. Equity.

The undersigned, trustee in the above-entitled cause, respectfully reports to the court that, in pursuance of the decree herein as modified by the court in general term, he did, on Friday, the 9th day of April, A. D. 1880, at the hour of five o'clock p. m., offer, after full advertisement in the Washington Post and the Evening Star, two newspapers printed and published in the city of Washington, as required by the decree, the ground and premises mentioned and described in said decree for sale at public auction in front of said premises; that there was a large number of persons present, and that the bidding was spirited, and after due diligence and effort to secure the highest price the said ground and premises were sold to Mrs. Mary A. Batchelor at and for the sum of twenty-six thousand eight hundred dollars, ($26,800.)

The trustee further reports that the purchaser aforesaid
130 has complied with the terms of sale by paying to the trustee the sum of $6,700 in cash, and executing and delivering to him her four several promissory notes, payable to his order, with interest, respectively nine (9), eighteen (18), twenty-seven (27), and thirty-six (36) months after the day of sale aforesaid, and each for the sum of $5,025. The trustee further reports that said sale was fairly and honesty conducted, and that all or nearly all the parties in interest were present either in person or by their respective solicitors of record.

The trustee files herewith and prays credit for the annexed bills for advertising the sale here reported, and also the attempted sale on the 5th day of January last, amounting to $191.57; also $9.25, as follows: 200 postal card notices of sale for Jan'y 5th, 1880, $3.75; 100 like notices of sale of 9th instant, $2.50, and fifty plats of ground for information of bidders, $3.00.

The auctioneer, Thomas Dowling, Esq., has not returned to the trustee any bill for his services, but a fair and proper allowance to him is recommended for his trouble and diligence in the premises.

131 All of which is respectfully submitted.

R. W. TYLER, *Trustee.*

Subscribed and sworn to before me, this 23d day of April, A. D. 1880.

R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR., *Ass't.*

*Special Notice to Capitalists. Filed April 23d, 1880.*

Chancery sale of one of the most valuable business properties in Washington city, situate on northeast corner of Seventh and F streets northwest.

By virtue of a decree of the supreme court of the District of Columbia, equity cause No. 6617, doc. 19, the undersigned trustee will sell at public auction, in front of the premises, on Monday afternoon, January 5th, 1880, at 4 o'clock, part of lots 8 and 9, in square 455, fronting 31 feet on Seventh street by 53 feet 3 inches on F street (being opposite the United States Patent Office), together with the improvements thereon, consisting of a large four-story and mansard brick building, occupied as stores and officers. This is, without doubt, one of the very best business properties in Washing-
132 ton, and this sale will afford a rare chance for a safe and profitable investment.

Terms of sale: one-fourth (¼) cash, and balance in four equal installments, with 6 per cent. interest, at 6, 12, 18, and 24 months from day of sale. $500 deposit required when the property is struck off. For further information, see advertisement in Washington Post and Star newspapers, or inquire of the undersigned trustee or auctioneer.

R. W. TYLER, *Trustee*,
*Office*, 623 *F Street N. W.*

THOMAS DOWLING,
*Auctioneer.*

$3.75 paid for these notices; see opp. side.

(Endorsement:) N. B.—A receipted bill for printing and furnishing 200 of these notices was filed with my report to the court after first effort to sell the property.

R. W. TYLER, *Trustee.*

133 *Special Notice to Capitalists.*

Chancery sale of one of the most valuable business properties in Washington city, situated on northeast corner of Seventh and F streets, northwest.

By virtue of a decree of the supreme court of the District of Columbia, equity cause No. 6617, doc. 19, the undersigned trustee will sell at public auction, in front of the premises, on Friday, April 9th, 1880, at 5 o'clock p. m., part of lots 8 and 9, in square 455, fronting 31 feet on Seventh street by 53 feet 3 inches on F street, (being opposite the United States Patent Office), together with the improvements thereon, consisting of a large four-story and mansard brick building, occupied as stores and offices. This is, without doubt, one of the very best business properties in Washington, and this sale will afford a rare chance for a safe and profitable investment.

Terms of sale: One-fourth (¼) cash, and the balance in four equal instalments, with 6 per cent. interest, at 9, 18, 27, and 36 months from day of sale. $500 deposit required when the property is struck

off. For further information, see advertisement in Washington Post and Star newspapers, or inquire of the undersigned trustee or auctioneer.

R. W. TYLER, *Trustee*,
*Office*, 628 *F Street N. W.*

THOMAS DOWLING,
*Auctioneer.*

134 *Filed Apr.* 23, 1880.

(Press-work for the trade.)

WASHINGTON, D. C., *April* 22d, 1880.

Capt. R. W. TYLER, Trustee,
To R. BERESFORD, Dr.,
Job, Book, and Newspaper Printer, 523 Seventh street N. W.

To 100 postal cards, printed notice trustee's sale ---------- $2 50

Received payment. R. BERESFORD.

*Filed Apr.* 23d, 1880.

WASHINGTON, *April* 2d, 1880.

Messrs. TYLER & RUTHERFORD,
To A. M. TANNER,
Office of the Hektograph Co., No. 425 7th St., N. W.

Printing 50 copies of plats of square No. 455 ---------- $3 00

Received payment. A. M. TANNER.

*Filed Apr.* 23, 1880.

G. W. ADAMS, *Pres't.*
S. H. KAUFFMANN, *Sec. and Treas.*

WASHINGTON, D. C., 9 *April*, 1880.

R. W. TYLER, Trustee,
To THE EVENING STAR NEWPAPER Co., Dr.

To advertising in The Evening Star, as follows:
Mch. 3, '80, chan. sale, 12½, 16 ---------- $45 83

Received payment for Co.
[SEAL.] J. WHIT. HERRON.

135 G. W. ADVMS, *Pres't.*
S. H. KAUFFMAN, *Sec. & Treas.*

WASHINGTON, D. C., 9 *April*, 1880.

R. W. Tyler, Tr., to the Evening Star Newspaper Co., Dr.

To advertising in The Evening Star as follows: Dec. 16, chan. sale 13¼, 17---------- 51 74

Received payment for the Co.,
[SEAL.] H. L. ADAMS, *B. K.*

[On the side:] The Washington Post.

WASHINGTON, D. C., *April* 9, 1880.

Mr. R. W. Tyler, Trustee, to the Washington Post, Dr.

For advertising, as follows:

March 24, 1880. Chancery sale Brereton's property, cor. 7 & F Sts. 12 squares, d't April 9, 1880---- ---- -------- $42 00

Received payment for company,

EDW. T. FLETCHER.

*Filed Apr.* 23, 1880.

[On the side:] The Washington Post.

WASHINGTON, D. C., *April* 9, 1880.

Mr. R. W. Tyler, Trustee, to the Washington Post, Dr.

For advertising, as follows:

Dec. 16, 1879. Chancery sale Brereton's property, cor. 7 & F Sts., 13 squares daily till Jan. 5, 1880---------- $52 00

Received payment for company,

EDW. T. FLETCHER.

136 *Statement. Filed Apr.* 23, 1880.

THOMAS DOWLING, Auctioneer.

WASHINGTON, D. C., *April* 9, 1880.

Mr. R. W. TYLER, Trustee, City, Dr.

L. F. —.

1879.

| | | | | | |
|---|---|---|---|---|---|
| Dec. | 16. | To adv'ts in | Star | ---------- | 51 74 |
| " | 16. | " " " | Post | ---------- | 52 |
| 1880. | | | | | |
| M'ch | 23. | " " " | Star | ---------- | 45 83 |
| " | 24. | " " " | Post | ---------- | 42 |
| | | | | | $191 57 |

Book R. E., folio 98.

WASHINGTON, D. C., *9th April*, 1880.

Sales for account of R. W. Tyler, trustee, by Thomas Dowling, auction and commission merchant, S. W. corner Pennsylvania avenue and Eleventh street.

Agreeable to the annexed advertisement the property therein described was sold to Mrs. Mary A. Batchelor for $26,800.

Charges ——.

Com's ——.

137 *Advertisement of Sale Ap'l* 9, 1880. *Thomas Dowling, Auctioneer.*

Chancery sale of improved real property on the northeast corner of Seventh and F streets northwest, opposite the Patent Office.

In pursuance of a decree of the supreme court of the District of Columbia, sitting in equity, in a certain cause therein pending,

entitled "Sarah A. Brereton *vs.* James I. Brereton *et al.*, No. 6617, doc. 19," the undersigned trustee will sell at public auction, in front of the premises, on Friday, April 9th, 1880, at 5 o'clock P. M., all and singular those certain "parts of lots numbered respectively eight (8) and nine (9), in square numbered four hundred and fifty-five (455), in the city of Washington, District of Columbia, beginning for the same at the southwest corner of said square and running thence north along the line of Seventh (7th) street northwest thirty-one (31) feet, thence east thirty-three (33) feet three (3) inches, thence north eight (8) feet, thence east twenty (20) feet, thence north sixty-two (62) feet ten and one-half (10½) inches, thence east seven (7) feet, thence south sixty-four (64) feet five and one-half (5½) inches, thence west two (2) feet and six inches, thence south six (6) feet, thence west four (4) feet and six (6) inches, thence south along the east
138 line of lot numbered nine to F street, and thence fifty-three (53) feet and three (3) inches to the place of beginning, together with all and singular the improvements thereon and the appurtenances thereunto belonging." The improvements consist of a large brick building now rented for stores and offices. Terms of sale are: One-fourth of the purchase money in cash, and the residue in four equal instalments, payable, respectively, nine (9), eighteen (18), twenty-seven (27), and thirty-six (36) months from and after the day of sale, with interest at the rate of six per cent., secured by the promissory notes of the purchaser, and a deed of trust upon the property described. If the terms of sale shall not be complied with in ten days after the day of sale the trustee reserves the right to resell at the risk and cost of the first purchaser. All conveyancing at purchaser's cost. A deposit of $500 required at the time of purchase.

R. W. TYLER, *Trustee*,
(Post) *Office, No. 628 F St. N. W.*

139 *Order nisi ratifying sale. Filed Apr.* 23, 1880.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON, Complainant,
*vs.*
JAMES I. BRERETON *et als.*, Defendants. } 6617, Equity. Doc. 19.

Upon reading the report of R. W. Tyler, trustee, in the above-entitled cause this day filed, it is by the court this 23d day of April, A. D. 1880, ordered, that the sale made and reported by said trustee be ratified and confirmed, unless cause to the contrary be shown on before the 24th day of May, A. D. 1880; provided, a copy of this order be published in the Washington Law Reporter once a week for three successive weeks prior to said last-mentioned date.

The report states the amount of the sale to be $26,800.

By the court:

D. K. CARTTER, *Ch'f Just.*

140 *Order Referring Cause to Auditor to State Trustee's Acc't. Filed Apr. 23d, 1880.*

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON, Complainant,
*vs.*
JAMES I. BRERETON *et als.*, Defendants. } 6617, Equity. Doc. 19.

It is this 23rd day of April, A. D. 1880, on motion of complainant's solicitor, ordered that this cause be, and the same hereby is, referred to the auditor of the court to state the trustee's account and the legal distribution of the fund among the parties in interest.

By the court:

D. K. CARTTER, *Ch'f Just.*

141 *Order nisi on Confirmation of Sale. Filed May 19, 1880.*

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et al.* } No. 6617. Doc. 19.

The publication of the order *nisi* confirming the trustee's sale in this cause having been inadvertently omitted, it is by the court this 19th day of May, A. D. 1880, ordered that the sale of the real estate in the proceedings mentioned be ratified and confirmed unless cause to the contrary thereof be shown on or before the 19th day of June next; provided, a copy of this order be published in the "Washington Law Reporter" once a week for three successive weeks before said day.

The report states the amount of the sale to be $26,800.00.

By the court: A. B. HAGNER, *A. J.*

142 *Order Finally Confirming Sale. Filed Jun. 23d, 1880.*

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAS. I. BRERETON *et al.* } No. 6617. Equity.

It appearing to the satisfaction of the court that no objections have been filed to the sale reported in this cause, and that the order *nisi* ratifying said sale has been duly published as therein required, it is thereupon this 23d day of June, A. D. 1880, ordered that the said sale be, and the same is hereby, finally ratified and confirmed.

By the court:

W. S. COX, *Justice.*

143 *Auditor's Report. Filed July* 2, 1880.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et al.* } No. 6617. Eq. Doc. 19.

This cause was referred to me to state the trustee's account and the legal distribution of the fund among the parties in interest.

After due notice to all the parties in interest, I proceeded, on the 29th of April, 1880, and subsequent days, to hear the parties and their proofs, and submit herewith as part of this report the depositions and exhibits furnished in evidence in the course of the audit.

The statement of the trustee's account will be found in Schedule A of this report, in which the trustee is charged with the proceeds of the sale of the property in question, and credited with the costs and expenses of the sale and with the taxes & assessments paid by him.

The balance of the fund is carried to Schedule B for distribution.

144 As affecting this question of distribution it is proper that I should state here so much of the history of this property as may be needed for the information of the court upon this point:

William H. Brereton and Samuel, his brother, being tenants in common of the property in question, the said Samuel and his wife (the plaintiff in this cause), on the 29th of September, 1859, conveyed the one-half undivided interest of the said Samuel in the said property to Peter Hannay, and to his heirs and assigns forever, to have and to hold in and upon the following trusts, that is to say: In trust for the sole use and benefit of the said Sarah H. Brereton during her natural life, free from all ownership, control, and obligation of, to, and for her said husband, except as in the said deed provided for, she to receive the rents, issues, and profits of the said undivided one-half interest, and apply the same for her sole use and benefit; and upon the further trust at any time thereafter, upon the written request of said Sarah A. Brereton, and the written consent of said Samuel Brereton, to sell, dispose of, or convey

145 the said property absolutely, in fee-simple, in trust or for such term or terms, and for such uses and purposes, and to such person or persons, as the said Sarah A. Brereton, with the written assent of the said Samuel, might request or direct in writing; and upon the further trust, that in the event of the death of the said Sarah, during the lifetime of the said Samuel, the said trust should cease and determine and the said property revert and belong to the said Samuel, as before the said trust was made, and should the said Sarah survive the said Samuel, then, upon and after the death of the said Sarah, the said trustee, his executors, administrators, or assigns should hold the said property in trust for the use and benefit of the heirs of the said Samuel, or in trust for whomsoever the said Samuel might direct by last will and testament or other instrument of writing, and convey the same, in fee-simple, to the said heirs of

Samuel Brereton, within a reasonable time after the decease of the said Sarah, unless otherwise ordered by some court of law, etc.

This conveyance was recorded on the 9th of April, 1860, and a copy of the same is filed in this proceeding.

146 On the first of February, 1873, William H. Brereton and wife conveyed to William H. Ward the undivided moiety of the said William in the said property in trust to secure an indebtedness of ten thousand dollars to Charles Batchelor, payable in three years from the said first of February, 1873, with interest at eight per cent.

This conveyance is filed as an exhibit, and is marked "A" No. 4, to this report, and was recorded on the 29th of August, 1873.

On the 7th of August, 1873, Samuel Brereton and wife attempted to convey to John D. Byrne the undivided moiety of the said property in trust, to secure an indebtedness to one John H. Wright to the sum of six thousand dollars, payable in three years, with interest at the rate of ten per cent. per annum.

The trustee, Hannay, was not a party to and did not unite in the execution of this conveyance.

The deed in question is filed as an exhibit, marked A No. 1, to this report.

On the first of June, 1874, a conveyance was executed, which is filed in this cause as an exhibit to this report, marked A No.

147 5, and which recites "Wm. H. and Sam. Brereton" as parties of the first part, and "Wm. H. Ward" as grantee, or party of the second part. It describes the whole of the property in question as that which was intended to be conveyed by the said deed, in trust to secure to Charles Batchelor an indebtedness of thirty-five hundred dollars, payable in three years, with interest at ten per cent. per annum. The signature of Sarah A. Brereton appears to the said deed with her seal. She also united in the acknowledgment attached to the said deed, the said acknowledgment being made in the proper form prescribed by the statute regulating that matter in this District.

It will be observed that she is not a party named in any of the recitals of the said deed, and that the trustee, Hannay, is neither mentioned as a party, nor does he unite in any manner in the execution or acknowledgment of the conveyance.

On the 15th of January, 1876, John J. Byrne executed and delivered a release and reconveyance of the said premises of and from the deed of trust made on the 7th of August, 1873, and identified as Exhibit A No. 1 to this report.

148 John H. Wright, the party secured by the deed of trust, also signs the said deed of release in evidence, as appears by the recitals of the said deed, that the said debt, with interest and costs, had been fully paid and discharged to him.

This deed of release is filed and marked Exhibit A No. 3 to this report.

On the same date a new deed of trust was made and executed by Hannay, the trustee, Samuel Brereton and Sarah A. Brereton conveying to John P. Barker and John J. Byrne the undivided half

interest in the said property in trust, to secure to the said John H. Wright an indebtedness of six thousand dollars, due and payable in three years, with interest at the rate of ten per cent. per annum until paid. This deed of trust is filed and marked Exhibit A No. 2 to this report.

The proof submitted in the course of the audit is to the effect that the indebtedness secured by the original deed of trust to Byrne was not paid; but that there was a novation, or substitution of a new note secured by the last-mentioned deed of trust.

149 It is sufficient to say in this connection that, in my judgment, the lien of the first deed of trust was absolutely determined by the said deed of release, and the debt in fact paid and discharged, and that the lien upon the said property as security for the indebtedness to Wright attached only upon the record of the deed made on the 15th of January, 1876.

On the 30th of May, 1876, Samuel Brereton died intestate, leaving the plaintiff, his widow, and an infant son, James I. Brereton.

The share arising from the undivided interest or moiety of William H. Brereton in this property is first appropriated to the indebtedness to Batchelor, secured by the deed to Ward, dated the first of February, 1873, and a calculation and statement of the same will be found in Schedules B and C.

The deed of Samuel Brereton and wife to Byrne, dated August 7, 1873, being released and discharged by the deed of January 15, 1876, needs no further mention in the order of this distribution.

150 The next conveyance, under which distribution is claimed, is that of the first of June, 1874, in which the complainant, Sarah A. Brereton, was not recited as a party, although signing the said conveyance and acknowledging the same to be her act and deed.

The principal controversy in this distribution arises over this indenture.

It is asserted, upon the one hand, that this deed cannot be recognised here, inasmuch as the trustee is not in any manner a party to it, and inasmuch as it is left uncertain what might have been the intention of the complainant, Sarah A. Brereton, in affixing her signature and uniting in the acknowledgment of the same.

Upon the other hand it is argued that the paper is such an act of the said Sarah A. Brereton as will induce a court of equity to recognise it as the exercise upon her part of the power of appointment, or a direction to her trustee, and to enforce the same as such, and this distribution being in a court of equity, and being the act of a court of equity, the instrument in question will be so treated and enforced.

151 I file with this report a somewhat elaborate and able brief submitted by the solicitor for Batchelor, the party secured by the said deed of trust, but I am unable to bring myself to the conclusion at which he arrives so far as the distribution of this fund is concerned.

While it is possible that this indenture or paper, or whatever it may be termed, so far as Sarah A. Brereton is concerned, if accom-

panied by evidence explanatory of the intention of the parties at the time of the making or the signing of the paper, might be enforced by a court of equity as an exercise of the powers invested in her by the deed to Hannay, I am constrained to look upon the paper as absolutely void, so far as she is concerned, for the purpose of this proceeding.

In my examination of authorities upon this subject I find a case reported in 4th Howard's United States Supreme Court Reports, page 225, in which the language of the court is substantially this: "That if a wife join her husband in the execution of a deed which contains no word of grant upon her part, it is insufficient to
152 convey her title, though she may receive the purchase-money."

The facts in that case were almost identical with the facts here, except as to the character of the action in which the question arose, and Chief Justice Taney, in delivering the opinion of the court, which appears to have been unanimous, characterizes the conveyance in question, so far as the wife is concerned, as absolutely void.

I have, therefore, in Schedule B, treated this conveyance as that of William H. Brereton alone, and as not conveying or effecting the interest or estate of the said Sarah A. Brereton, and the distribution to the indebtedness secured by this deed of trust is, therefore, made from the share of the said William H. Brereton, so far as the same is available.

The two debts secured by the two several deeds to Ward more than exhaust the share of the said William H. Brereton, which disposes of that side of the fund.

From the share arising from the moiety or interest of Sarah A. Brereton and her trustee Hannay, the first application is to
153 the indebtedness secured by the deed to Barker and Byrne on the 15th of January, 1876, the calculation and statement of which will be found in Schedule B & D. The remainder of this share of the fund is distributed in this schedule in accordance with the rights of the parties under the deed to Hannay, the trustee.

It is proper for me to say, although perhaps not important in this matter of distribution, that this trustee Hannay died pending this proceeding.

The title, however, had been divested from him and vested in the trustee appointed under the decree to make sale.

At the request of the counsel representing the indebtedness secured by the second deed of trust to Ward, I have stated an alternative distribution upon the basis or theory of the said deed as binding the interest of Sarah A. Brereton. This will be found in Schedule "E."

In distributing to the indebtedness secured by this second deed to Ward, another question has arisen, which is the claim of the trustee to one-half commissions on the indebtness secured by the said trust.

154 The deed contains the following provision: "And it is further agreed that if the property shall be advertised for sale under the provisions of the deed and not sold, then the said trustee

shall be entitled to one-half the commission above provided, to be computed on the amount of the debt hereby secured."

The commission referred to as "above provided" was five per cent.

The property was advertised by the trustee Ward under both of the conveyances to him, and pending such advertisement the bill in this cause was filed, praying, among other things, an injunction against the said trustee, which was granted, and the said sale was not completed. The contract of the parties clearly entitles the trustee to the commissions claimed by him, which I have, therefore, allowed, as well as the cost of the publication of the sale attempted to be made by him.

The defendant, William H. Brereton, who was the owner of an undivided moiety of this property, claims contribution from the other share or moiety by way of the payment of a note of one
155 thousand dollars given by Samuel Brereton, on the first of February, 1873, payable in three years, to the order of William H. Brereton, with eight per cent. interest, payable monthly.

A copy of the note in question, with several endorsements of credits thereon, is filed as an exhibit to this report, and marked A No. 7. The note itself recites that it is given to William H. Brereton "as security for the money borrowed of Charles Batchelor."

William H. Brereton asserts that the money borrowed from Batchelor was used for the benefit and improvement of the whole of the property in question, for which Samuel should have contributed in proportion to his share of the property.

He says, however, that the ten thousand dollar matter was settled by the giving of this one thousand dollar note.

It appears that the six thousand dollars borrowed upon the other share or interest in the property was also used for the benefit and improvement of the entire estate; but it does not appear whether such application was considered or treated as a settlement of
156 the claim of William for the appropriation of the money borrowed from Batchelor.

The one thousand dollar note, however, is contested upon the ground, among others, that it is barred by the statute of limitations.

By reference to the copy filed as an exhibit it will appear, as is also shown on the original, that the last endorsement made by way of any acknowledgment of this obligation was on the first of February, 1876, more than three years prior to the filing of the claim on account of the said note. This objection, therefore, seems to be sufficient to exclude the note from any consideration in this distribution.

Another claim presented by William H. Brereton is for compensation for services alleged to have been rendered by him in the collection of all of the rents of the said property, as well the proceeds of the other share as of his own.

The proof shows that both during the lifetime of Samuel Brereton and after his death William attended to and managed the collection of the rents of the property, but that at no time did he ever charge or assert any claim for compensation for the services so per-
157 formed. He also admits in his deposition, and it is the sub-

ject of conclusive proof, that at no time did he make any claim against the complainant for such compensation, or ever notify her that he intended so to claim. On the contrary, he divided the rents, giving to her her share without any deduction or reservation on account of services rendered by him. In addition to these facts, it also appears in proof that a son of William H. Brereton occupied a portion of the premises in question without paying rent therefor or being called upon to pay such rent. It seems very clear that there was no intention on the part of any of the parties that William H. Brereton should be paid for these services, and I have, therefore, not taken the claim into account.

In the payment of taxes by the trustee there is included the general tax for the second half of the current fiscal year. Of this bill I have allowed to the trustee the proportion of this tax up to and including the day of sale.

The purchaser, being entitled to the possession & rents of the property from that date, is chargeable, I think, with the taxes thereafter.

I file with this report a stipulation entered into between the solicitors, in pursuance of which this tax was paid by the trustee.

July 2d, 1880.

JAS. G. PAYN, *Auditor.*

158 "SCHEDULE A."

*Account of R. W. Tyler, Trustee.*

Dr.

| | | |
|---|---|---|
| To proceeds of sale of part of lots 8 and 9, in square No. 455 | $26,800 | |
| Cash | ------ | 6,700 |
| First deferred payment | 5,025 | |
| Interest 9 months | 226 12 | |
| | | 5,251 12 |
| Second deferred payment | 5,025 | |
| Interest 18 months | 452 25 | |
| | | 5,477 25 |
| Third deferred payment | 5,025 | |
| Interest 27 months | 678 37 | |
| | | 5,703 37 |
| Fourth deferred payment | 5,025 | |
| Interest 36 months | 904 50 | |
| | | 5,929 50 |
| Gross proceeds of sale | | 29,061 24 |

Cr.

| | |
|---|---|
| By costs of suit | 53 85 |
| " publication of notice of sale "Star" | 97 57 |
| " do. do. "Post" | 94 |
| " do. do. postal card | 6 25 |
| " do. order *nisi* | 10 10 |

| | |
|---|---|
| By costs of plats | 3 |
| " " " exhibits | 3 |
| " tax certificates | 1 |
| " trustee's commissions (including allowance to auctioneer, $36.32) | 901 84 |
| " taxes paid | 950 75 |
| " auditor's fee | 60 |
| Balance for distribution | 26,874 88 |
| | $29,061 24 |
| Cash | 4,513 64 |
| Deferred payments | 22,361 24 |

JAS. G. PAYN, *Auditor.*

159 SCHEDULE " B."

*Distribution.*

| | | |
|---|---|---|
| Balance of cash payment | | 4,513 64 |
| One-half being the share of William H. Brereton, applied to indebtedness to Batchelor, secured by deed of trust, Feb. 1, 1873 | 2,256 82 | |
| One-half being the share of complainant and the heirs of Samuel Brereton, applied to the indebtedness to John H. Wright, secured by deed of trust | 2,256 82 | |
| First deferred payment | | 5,251 12 |
| One-half being the share of William H. Brereton, applied to the indebtedness to Batchelor, secured by deed of trust | 2,625 56 | |
| One-half being the share of complainant and heirs of Samuel Brereton, applied to the indebtedness to John H. Wright, secured by deed of trust | 2,625 56 | |
| Carried forward | 9,764 76 | 9,764 76 |
| 160 | 9,764 76 | 9,764 76 |
| Second deferred payment | | 5,477 25 |
| One-half being the share of William H. Brereton, applied to indebtedness to Batchelor, secured by deed of trust | 2,738 62 | |
| One-half being the share of complainant and heirs of Samuel Brereton | 2,738 62 | |
| Applied to balance of indebtness to Jno. H. Wright 2,224 96 | | |
| To complainant as commu-tion of her life estate, $\frac{2}{5}$ 205 46 | | |
| To James J. Brereton, infant, the balance 308 20 | | |
| Fractions | 01 | |

| | | | |
|---|---|---|---|
| Third deferred payment | | | 5,703 37 |
| One-half being the share of William H. Brereton, applied to indebtedness to Batchelor, secured by deed of trust | | 2,851 68 | |
| To complainant: | | | |
| Commutation of her life estate in one-half | | 1,140 67 | |
| To James J. Brereton: | | | |
| The balance | | 1,711 02 | |
| | | $20,945 38 | $20,945 38 |

161

| | | | |
|---|---|---|---|
| | | 20,945 38 | 20,945 38 |
| Fourth deferred payment | | ------ | 5,929 50 |
| One-half, being the share of William H. Brereton | | 2,964 75 | |
| Applied as follows: | | | |
| To balance of indebtedness to Batchelor under deed of trust | 2,638 77 | | |
| " costs of advertisement of attempted sale under the said deed of trust and the second deed to Ward | 86 18 | | |
| " William H. Ward, trustee's half commissions for attempted sale under deed of June 1st, 1874 | 87 50 | | |
| Balance to indebtedness to Batchelor, secured by said deed of trust | 152 30 | | |
| To complainant: | | | |
| Commutation of her life estate in one-half | | 1,185 90 | |
| To James J. Brereton: | | | |
| The balance | | 1,778 85 | |
| | | $26,874 88 | $26,874 88 |

JAS. G. PAYN, *Auditor.*

162 SCHEDULE C.

*Statement of Indebtedness Secured by Deed of Trust to Wm. H. Ward, February 1, 1873.*

| | | |
|---|---|---|
| Amount of principal of debt | | 10,000 |
| Interest from July 2, 1876, to July 1st, 1880, at 6 per cent. | 2,398 33 | |
| Less subsequent payments on interest | 280 | |
| | | 2,118 33 |
| | | 12,118 33 |

| | | |
|---|---|---|
| July 1, 1880. Payment | | 2,256 82 |
| | | 9,861 51 |
| Interest to Jan'y 9, 1881 | | 308 89 |
| | | 10,170 40 |
| Payment Jan'y 9, 1881 | | 2,625 56 |
| | | 7,544 84 |
| Interest to Oct. 9, 1881 | | 339 36 |
| | | 7,884 20 |
| Payment Oct. 9, 1881 | | 2,738 62 |
| | | 5,145 58 |
| Interest to July 9, 1882 | | 231 39 |
| | | 5,376 97 |
| Payment | | 2,851 68 |
| | | 2,525 29 |
| Interest to April 9, 1883 | | 113 48 |
| | | 2,638 77 |
| Payment | | 2,638 77 |

JAS. G. PAYN, *Auditor.*

163 SCHEDULE D.

*Statement of Indebtedness Secured by Deed of Trust to John P. Barker and John J. Byrne.*

| | | |
|---|---|---|
| Principal debt | | 6,000 |
| Interest from Jan'y 15, 1879, to July 1, 1880, at ten per cent. | 875 | |
| Less payment proven | 250 | |
| | | 625 |
| | | 6,625 |
| Payment | | 2,256 82 |
| | | 4,368 18 |
| Interest to Jan'y 9, 1881 | | 327 35 |
| | | 4,695 53 |
| Payment | | 2,625 56 |
| | | 2,069 97 |
| Interest to Oct. 9, 1881 | | 154 99 |
| | | 2,224 96 |
| Payment | | 2,224 96 |

JAS. G. PAYN, *Auditor.*

164 SCHEDULE E.

*Alternative Distribution treating the Deed of Trust to Wm. H. Ward, dated June 1, 1874. as a Valid Lien upon the Interest or Moiety held by Peter Hannay in Trust for Sarah Brereton.*

| | | | |
|---|---|---|---|
| 1876. | | | |
| Aug. 24. | Amount of principal debt | ------ | 3,500 |
| | Interest to June 1, 1877, at 10 per cent., and to July 1, 1880, at 6 per cent. | ------ | 916 80 |
| | | | 4,416 80 |
| | Apply one-half of the balance of cash to: | | |
| | Half commissions of trustee | 87 50 | |
| | Remainder to this debt | 2,169 32 | 2,169 32 |
| | | 2,256 82 | 2,249 68 |
| | Interest to Jan'y 9, 1881 | ------ | 70 85 |
| | | | 2,318 33 |
| | Apply portion of one-half of first deferred payment | ------ | 2,318 33 |
| | Leaving a balance of one-half of first deferred payment | 307 23 | |
| | Indebtedness to John H. Wright, secured by trust to Barker and Byrne | | 6,000 |
| | Interest to Jan'y 15, 1879, to Jan. 9, 1881 | 1,175 | |
| | Less payment | 250 | |
| | | | 925 |
| | Amount carried forward | | 6,925 |
| 165 | Amount brought forward | | 6,925 |
| | Apply balance of deferred payment as above | 307 23 | |
| | And one-half of first deferred payment | 2,625 56 | 2,932 79 |
| | | | 3,992 21 |
| | Interest to Oct. 9, 1881 | ------ | 299 53 |
| | | | 4,291 74 |
| | Apply one-half of second deferred payment | ------ | 2,738 62 |
| | | | 1,553 12 |
| | Interest to July 9, 1882 | ------ | 116 60 |
| | | | 1,669 72 |

| | | | |
|---|---|---|---|
| One-half of third deferred payment | 2,851 68 | | |
| Apply to this debt | 1,669 72 | 1,669 72 | |
| | 1,181 98 | | 1,181 96 |
| To the complainant, $\frac{2}{5}$ | | 472 80 | |
| To Jas. J. Brereton | | 709 16 | |
| Fourth deferred pay (one-half) | | | 2,964 75 |
| To the complainant, $\frac{2}{5}$ | | 1,185 90 | |
| To Jas. J. Brereton | | 1,778 85 | |
| Amount of Wm. H. Brereton's share of last deferred payment appropriated in Schedule B, to the trust of June 1, 1874 | | | 239 80 |
| To the complainant, $\frac{2}{5}$ | | 95 92 | |
| To Jas. J. Brereton | | 143 88 | |

JAS. G. PAYNE, *Auditor.*

(Pages 166 to 170, inclusive, omitted in printing, per stipulation of counsel.)

171 MAY 4, 1880—2 o'clock p. m.

Met pursuant to adjournment.

Present: Mr. Elliott, for plaintiff; Mr. Barnard, for the defendants, John J. Byrne, Wright & Baker.

Mr. Duvall appears for Mrs. Batchelor and Mr. Ward; Mr. Norris appears for Mr. Brereton; Mr. Elliott also appears for *for* the guardian *ad litem*, infant defendant, James I. Brereton.

WILLIAM H. BRERETON sworn, & examined by Mr. DUVALL:

Q. (Handing witness two notes.) Will you look at those notes and state whether they are the genuine signatures of the parties whose names are attached?

A. This is my signature (referring to note of $10,000); this is my brother's and mine, too (referring to the $3,500 note).

"$10,000. NEW YORK, *February* 1, 1873.

"Three years after date I promise to pay to the order of Charles Batchelor, Esquire, $10,000, at the Broadway National Bank, New York city, value received, with interest at eight per cent. from date.

"WILLIAM H. BRERETON.

"Due February 4, 1876."

172 "$3,500. WASHINGTON, *June* 1, 1874.

"Three years after date I promise to pay to the order of Charles Batchelor $3,500, with ten per cent. interest, and secured by deed of trust, and interest to be paid semi-annually.

"WILLIAM H. BRERETON.
"SAMUEL BRERETON."

No endorsements appear upon the back of these notes. They are presented by Mr. Duval, as solicitor for Mrs. Mary A. Batchelor, administratrix, who further states that interest has been paid on the said notes as follows: On the $10,000, up to the second day of July, 1876, and on the $3,500, up to August 24, 1876, and in October, 1878, the sum of $100 was paid generally on account.

(Testimony of Byrne omitted in printing, per stipulation of counsel.)

178 WILLIAM H. BRERETON, called by Mr. NORRIS:

Q. By Mr. NORRIS: You will state whether you are one of the defendants in this case.

A. I am.

Q. In this deed, in which you convey your property up there to secure $10,000 to Mr. Batchelor, and you signed the note which has been read here, will you state for what purpose that was borrowed?

A. It was for improvements at different times on the house.

Q. For what improvements?

A. Some for sewerage, some for paving, and some for rebuilding the house at and previous to that time.

Q. Was it all expended in that way?

179 A. I think it was; pretty much all.

Q. That is an individual note, and you and your brother held that property jointly at the time, I believe, did you not?

A. I think so, sir; yes, sir.

Q. What portion of that money did he become responsible for?

(Mr. Elliott objects to the question unless Mr. Norris proposes to follow it up by showing some contract or agreement between the two brothers, Brereton, in reference to their respective liabilities for the amount borrowed.)

(The question is admitted to be hereafter disposed, as the testimony may develope.)

A. He became responsible for a thousand dollars of it. He gave me his note.

Q. Have you the note with you?

A. No, sir.

(Mr. Norris states that the note will be produced.)

Q. When that property was improved, as you speak of, how were the rents divided from that time down to the death of your brother?

(Mr. Elliott objects.)

A. I gave him one-half every month; regularly every month.

180 Q. Did he receive half of the rents after this money went into the improvements?

A. Yes, sir; and all the time from my father's death.

Q. How have the rents been divided since his death?

(Mr. Elliott objects to the question.)

A. They have been divided equally ever since.

Q. I mean since your brother's death?
A. His wife got one-half.
Q. Now, will you tell me who took charge of that property and managed it, collected the rents, and attended to the improvements from the time of your father's death down to the present time?

(Mr. Elliott objects to the question, as being irrelevant and incompetent.)

A. I did, myself.
Q. Did your brother, who is deceased, ever take any part in those matters?

(Objected to by Mr. Elliott.)

A. No, sir; except receiving his portion of the rent.
Q. What do you suppose your services were worth in collecting the rents and taking charge of the property and managing it generally?

(Mr. Elliott objects.)

A. That I could not tell.
181 Q. Give your own opinion about it.
A. What I was legally allowed, I suppose, I ought to have.
Q. What other agents would be entitled to in collecting the rent and managing the property you think you would be entitled to?

(Objected to by Mr. Elliott.)

A. I should think so.
Q. Have you ever made, or paid for, improvements there that you have never made a charge for?

(Objected to by Mr. Elliott.)

A. No; I think they are all charged.
Q. You have continued, I believe, down to the date of sale here, to collect these rents and have half of them paid over to Mrs. Brereton?
A. Yes, sir.
Q. Have you ever charged her for any collections?
A. No, sir.
Q. Has she collected them?
A. No, sir; she came to the office for her portion.
Q. I mean from the tenants—she never collected from them?
A. No, sir.

182 Cross-examined by Mr. ELLIOTT:

Q. When were the improvements made upon this property?
A. I don't recollect what time they were made.
Q. About how many years ago?
A. I don't know, really. I have nothing to go by.
Q. Was this money which was borrowed from Mr. Batchelor, $10,000, borrowed for the purpose of improving the building after the change of grade?

A. Yes, sir; the building was improved at that time, and the sewers were dug there.

Q. Was the money that was borrowed from Batchelor borrowed for the purpose of improving the building rendered necessary by the chance of grade?

A. Yes, sir; I think it was.

Q. And was expended, you say, in that way?

A. Yes, sir.

Q. What builders, or workmen, made the improvements?

A. Job Argus.

Q. Who contracted with Job Argus for that purpose?

A. I think we both did.

Q. Was there a written contract?

A. I don't think there was.

Q. You could not give us the year when that was done?

183 A. I really could not.

Q. How much money was actually expended in improving the building?

A. $6,000, I think.

Q. From what source was that obtained?

A. From Mr. Batchelor.

Q. What became of the other $4,000?

A. That went into the sewerage afterwards. The sewerage was put in a year or so afterwards.

Q. What became of the $3,500?

A. That went into the building, too. The last $3,500 that was gotten at the time after we got the money from Wright, and Ruff's bank was closed, and we were forced to borrow the $3,500 to finish the improvements.

Q. What disposition was made of the $3,500 you got from Batchelor?

A. That went into the building also.

Q. That was $13,500 went into the building?

A. There is more than that altogether.

Q. $10,000 and $3,500 you have already identified as going into the building.

A. Then there is $6,000 borrowed from Wright that went into the building, except what was left in Ruff's bank. My brother handled all that money; I handled none of it.

184 Q. Do you know it was expended in improving that building?

A. I do, sir.

Q. Who did the work upon the occasion of the last improvement?

A. Mr. Plowman was the architect.

Q. Who was the builder?

A. Mr. Deane.

Q. Was he the contractor?

A. He was the builder, and then a man from Georgetown did the brick work.

Q. And Mr. Samuel Brereton handled the money?

A. Yes, sir.

Q. Did you examine the bills?

A. Yes, sir; I looked over them occasionally.

Q. Can you tell exactly how much money was expended in the last improvement?

A. I think it was all expended.

Q. Then there was $19,500 expended in all in improving the building?

A. Yes, sir.

Q. And that was secured by ten thousand dollars upon your half, six thousand upon Samuel's half, and $3,500 upon the whole?

A. That is correct.

185 Q. How and by whom was the interest paid upon the Wright note?

A. Very often on collecting the rent we would give the rent to Mr. Wright and pay him the difference.

Q. Did not Mrs. Brereton, the plaintiff in this case, pay all the interest that was ever paid on the Wright note out of her share?

A. I think so.

Q. Did not you, or the owner of the other moiety, pay all the interest upon the $3,500 note?

A. No, sir; I paid it after my brother's death, but previous to that time he paid it.

Q. After the death of Samuel Brereton was not the arrangement between you and Sarah A. Brereton this: That she was to pay the interest upon the Wright note, and you would pay the interest upon the Batchelor note?

A. She was to allow me that thousand dollar note.

Q. I ask you this question: Whether or not, after the death of Samuel Brereton, it was not agreed between you that you should pay the interest upon the $3,500 note, and she was to pay the interest on the Wright note?

A. Yes, sir; in that way.

186 Q. What do you mean by "that way"?

A. That she was to pay the one thousand dollar note.

Q. How did it happen, Brereton, that in view of the fact, as stated by you, that the $10,000 borrowed from Batchelor to improve this property on which you and your brother were tenants in common, that you became responsible for $9,000 and he became responsible for one thousand?

A. Part of it was gotten at different times, and he had paid me, I suppose, this portion, and only left this balance of $1,000.

Q. Now, can you tell the auditor how much of that $10,000 you used for your personal expenses?

A. Not any of it.

Q. All in the building?

A. All except the $1,000 he got.

Q. There was no deed of trust upon the property at the time of the execution of the first Balchelor trust?

A. I don't recollect of any.

Q. And you borrowed $10,000 upon your undivided moiety, and

Samuel Brereton subsequently paid you one-half, less a thousand dollars?

A. Yes, sir.

187 Q. Was there any contract or agreement of any sort in writing between you?

A. No, sir.

Q. That was a mere verbal understanding?

A. Yes, sir.

Q. You have stated that you collected the rents of the property?

A. Yes, sir.

Q. I discover by your answer that you make claim for compensation. Did you ever make any claim of Mrs. Brereton, during the existence of this relationship, for any compensation whatever?

A. No, sir.

Q. Did you lead her to understand that you would claim any?

A. No, sir.

Q. You say that you paid Samuel Brereton one-half of the rents during his lifetime?

A. I did.

Q. And you paid to his widow one-half since his death of all the rents collected?

A. Yes, sir.

Q. Did the Brereton family on your side use any portion of that building and not pay any rent for it?

A. I never did; when I was keeping the store I paid him one-half.

Q. Having stopped keeping store, what is the fact?

188 A. My son had an office up there.

Q. Did he pay any rent for it?

A. He has not paid any rent; the agreement was with my brother to let him stay there without paying rent.

Q. How long did your son have an office there without paying rent?

A. Since my brother's death.

Q. Was not your son the one that collected these rents?

A. Yes, sir; in my name.

Q. He did the work?

A. Yes, sir; within the last few years.

Q. How were the taxes on this property paid?

A. Paid out of the building.

Q. Have they been paid at all?

A. The last two years have not.

Q. Who paid them, sir?

A. They were paid by each of us.

Q. Do you mean to say that Mrs. Brereton paid one-half and you paid the other?

A. I do, sir.

Q. Who was the agent employed to pay the taxes?

A. I was.

Q. And charged them against the rent?

A. Of course.

Q. Why didn't you pay the last two years?

189 A. Because I was not able.

Q. Was not the building under rent?

A. Yes, sir; but not for so much as it was.

Q. Was not the rents sufficient to pay the taxes?

A. Of course they were.

Q. And the rents were divided by you?

A. Yes, sir.

Q. The taxes have not been paid for the last two years?

A. No, sir.

Q. And for that you claim compensation; is that it?

A. I don't understand what you mean.

Q. You claim compensation as an agent when you did not pay the taxes that you were bound to pay out of the rent?

A. I do not claim compensation for not paying the taxes.

Q. You claim it for collecting the rents?

A. Yes, sir.

Q. Have you had any conversation with Mrs. Sarah A. Brereton in reference to this one thousand dollars since the death of your brother?

A. Yes, sir.

Q. When was the conversation?

A. I think it was soon after his death.

Q. Did you come to any agreement about it?

190 A. They agreed to pay the thousand dollar note if I would pay the interest on the other.

Q. Who do you mean by them?

A. Mr. Brereton and Mr. Hannay, I believe, after they saw the lawyer.

Q. Your brother died in May, 1876?

A. I think so.

Q. And this conversation occurred when?

A. Some four or five months after his death.

Q. In the presence of Mr. Hannay?

A. Yes, sir.

Q. And yourself and Mrs. Sarah A. Brereton?

A. Yes, sir.

Q. Any further conversation about it?

A. Nothing more.

Q. And the basis of that claim of a thousand dollars was the charge made by you for one-half of the money borrowed by you from Batchelor, and evidenced by this note and deed of trust?

A. Yes, sir.

Q. When did your son take charge of the collection of these rents, and the payment of the taxes?

A. When I was not there.

Q. When did you get them yourself?

A. I didn't get them myself. He was to collect when I was

191 not there. Even when my brother was living he would collect the rent.

Q. He generally settled with the plaintiff?

A. Yes, sir; he would very often give her the check for the money.

Q. As I understand your testimony, you never made any claim for any compensation until the filing of this answer?

A. None at all.

Q. There was no agreement on her part to pay you any?

A. No, sir.

Q. Did it require any more labor to collect the two halves of the rent than it required to collect one-half?

A. I don't suppose that it did.

Q. I wish you would refresh your memory, and furnish the auditor with the dates of the respective improvements made upon this building.

A. I think that would be impossible. The time the house fell I lost a great many of the papers and old receipts & bills.

Mr. Elliott reserves the right to further cross-examine.

Adjourned until Friday, May 7, 1880, at 2 o'clock.

(Pages 192 to 198, inclusive, omitted in printing, per stipulation of counsel.)

199 WILLIAM H. BRERETON called.

By Mr. NORRIS:

Q. (Handing witness a paper), Whose signature is that?

A. Samuel Brereton.

Mr. Norris offers the original noteas evidence, and files a true copy of the said note and the endorsements, which is filed and marked Exhibit A, No. 7.

The WITNESS: This endorsement signed "Samuel Brereton," in red ink, I was present when that was made.

Mr. Elliott objects to the introduction of the note, as irrelevant and incompetent.

Mr. Norris announces his testimony as closed in chief.

200 SARAH A. BRERETON, sworn and examined.

By Mr. ELLIOTT:

Q. State your full name?

A. Sarah A. Brereton.

Q. Are you the widow of Samuel Brereton?

A. Yes, sir.

Q. And complainant in this case?

A. Yes, sir.

Q. And the mother of James I. Brereton, the infant defendant?

A. Yes, sir.

Q. When did your husband die?

A. May 30th, 1876.

Q. You are one of the parties named in the deed from Samuel Brereton and yourself to Peter Hannay, I believe?

A. Yes, sir.

Q. After the death of your husband who collected the rents of the property on the corner of 7th and F streets?

A. William H. Bereton part of the time, or possibly W. H. Brereton, Jr., part of the time.

Q. Did you have any agreement with them, or either of them, in reference to any compensation for any services in that direction?

A. No, sir.

Q. Ever claim any?

A. No, sir.

201 Q. Was there any understanding in reference to the payment of the taxes and the interest upon these deeds of trust notes?

A. The taxes were to be paid alternately; it was always, I believe, taken from the rents; I believe we paid in that way; he was to pay six months and I was to pay the other six months.

Q. The taxes were to be paid before any division of the rents?

A. I don't think that was *that was* the understanding; it was always done; the money was taken out of the rents and the taxes paid.

Q. Did you know whether the taxes were paid?

A. I know they were paid up to 1878; I think I saw all the receipts except one or two; the last one I had myself.

Q. Who had charge of the paying the taxes?

A. Mr. Brereton's son, Taylor, I believe it was, paid them.

Q. You had the payment of the interest on these deeds of trust notes?

A. Well, I assumed Mr. Wright's interest in case Mr. Brereton would pay up the Batchelor interest.

Q. Did you handle the money or they?

A. They handled it.

Q. The interest and taxes were to be paid out of the rents before any division was made?

202 A. Yes, sir.

Q. You never took the money and delivered it to the tax office or the parties holding these notes?

A. No, sir; it was deducted.

Q. Out of the rents?

A. Yes, sir.

Q. And then the balance was divided?

A. Yes, sir.

Q. Do you know anything about the occupation of that building by William H. Brereton or any member of his family?

A. W. H. Brereton occupied two of the rooms as office rooms; the upper part of the house, I believe, since November or December a year ago, was occupied as a dwelling-house by the younger Brereton.

Q. Ever paid any rent for those premises?

A. No, sir.

Q. Did you not claim any?

A. No, sir.

Q. What is the age of your son, James J. Brereton?

A. 17 years.

Q. Can you tell when the improvements were made upon this property?

A. No, sir; I think it was prior to 1870.

Q. Prior to 1870?

A. Yes, sir; I think it was.

203 Q. Not certain abot that?

A. No, sir.

Q. You have had nothing to do with the disbursements of any money for the improvement of this building since the death of your husband?

A. No, sir; except papering and such affairs as that, and having the roof tinned and pavement repaired.

Q. I mean the alteration of the building.

A. No, sir.

Cross-examined by Mr. NORRIS:

Q. You say that you had an understanding that you were to pay the Wright interest if they paid the Batchelor interest?

A. If they kept the Batchelor interest paid up I was to pay up all Mr. Wright's interest in case they paid the Batchelor interest.

Q. With whom was that understanding?

A. With William Brereton; that was the interest on the thirty-five hundred dollars.

Q. Did not Mr. Brereton proposes to pay the taxes—the current taxes—and didn't you disagree and want a proportion of the allowance?

A. No, sir; I did not, because I was always very anxious to have the taxes paid.

204 Q. Didn't you ever demand your proportion of the rents?

A. Of course I demanded my proportion of the rents when the rents were due.

Q. How did you expect the taxes were to be paid, if you received your proportion of the rents every month?

A. The rents were large enough to pay the taxes every six months by taking that month's rent and appropriating it to the taxes.

Q. Did you get your proportion of the rents, as far as you know?

A. I have not recived my proportion of the rents; no, sir.

Q. Rents collected, I mean.

A. According to the statement Mr. Brereton has made, I have; just according to their statement.

By Mr. ELLIOTT:

Q. Are the statements correct?

A. I don't think they are.

By Mr. NORRIS:

Q. Then did you or not, at the expiration of the month, authorize Mr. Brereton to retain such proportion as you had to pay upon those taxes?

A. Except in one instance. The rents were taken in the office of Mr. William H. Brereton, Jr. Taylor would take the money
205 down to the tax office and pay the taxes. That was out of the rents.

Q. When was that?

A. That was every six months up to the time the taxes were paid, except in one instance, when Brereton was not able to pay his share of the taxes.

Q. After this bill was filed did not Mr. Brereton, through his son, request you to let your proportion go with his to pay the taxes that were then due?

A. No, sir; he did not.

Q. Did he not tell you the taxes ought to be paid?

A. No, sir.

Redirect by Mr. ELLIOTT:

Q. It becomes necessary in this case to prove your age; how old are you?

A. 41 years.

Q. Are you near 41 or 42?

A. I was 41 last February.

Mr. Norris desires to recall Mrs. Brereton for further cross-examination.

(Adjourned until Friday at 2 o'clock, May 14, '80.)

206 FRIDAY, *May* 14, 2 *o'clock p. m.*

Present: Mr. Elliott, for the plaintiff; Mr. Barnard, for the defendants, Mr. Byrne, Mr. Wright, and Mr. Barker. Mr. Duvall appears for Mrs. Batchelor & Mr. Ward; Mr. Norris appears for Mr. Brereton; Mr. Elliott appears for the guardian *ad litem*.

Mr. WILLIAM H. BRERETON recalled.

By Mr. BARNARD:

Q. Are you acquainted with the handwriting of your brother Samuel?

A. I am.

Q. (Handing witness the six thousand-dollar note to Wright.) That is the genuine signature of your brother?

A. I think it is.

Q. Is that your signature on the back of the note?

A. Yes, sir; that is my signature.

The note is offered in evidence, and not filed, the copy of the same being already furnished, with the consent of parties.

WILLIAM H. BRERETON recalled.

By Mr. NORRIS:

Q. Was there any understanding or agreement between you and Mrs. Sarah A. Brereton that the taxes should be paid alternately every six months?

207 A. Not that I recollect, sir; I think not.

Q. Who paid these taxes up to the time that they were paid?

A. My son paid them.

Q. Which one?

A. William H. Brereton, Jr.

Q. What agreement, if any, between you and Mrs. Brereton, the plaintiff, was there in relation to the division of the money after payment of taxes?

A. No arrangement at all that I recollect.

Q. What agreement, if any, was made between you and Mrs. Brereton, that if you paid the interest on the $3,500 note of Mrs. Batchelor she was to pay the interest on the Wright note?

Mr. Elliott objects; that these notes were in writing, and show the obligations of the makers, which cannot be varied or altered by any parol testimony.

A. I don't recollect any agreement; I think there was no agreement.

Q. Was there any agreement between you and Mrs. Brereton as to what proportion of the taxes which you should pay or she should pay?

A. No, sir.

Cross-examination by Mr. ELLIOTT:

Q. What do you mean by your son paying the taxes?

208 A. He paid them for me; I gave him the money, and he paid them.

Q. Were the taxes paid out of the rents?

A. Not at that time; I had to raise the money myself and pay them.

Q. When they were paid out of the rents they were deducted from the amounts you collected from the tenants, and your son paid the taxes?

A. No, sir; I paid them out of the money I got from Mr. Todd, and I paid them all up in full.

Q. Were the rents not sufficient to pay the taxes?

A. At that time they had all been used up.

Q. Who used them up?

A. Mrs. Brereton and I suppose myself.

Q. Have you paid any taxes for Sarah A. Brereton, for which she has not paid you?

A. I think not, sir.

(Pages 209 to 287, inclusive, omitted in printing, per stipulation of counsel.)

288 *Stipulation of Counsel as to Payment of Costs, &c. Filed Jul- 3d,* 1880.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et als.* } Equity. 6617.

It is, this 3rd day of July, A. D. 1880, stipulated by and between the undersigned, as solicitors of record in the above-entitled cause, as follows:

That the trustee may pay, out of the funds in his hands, the costs of the suit, the auditor's fee, the trustee's commissions, and the auctioneer's fee, together with the cost of advertising; also, costs of plats, exhibits, and tax certificates, notwithstanding the non-ratification of the auditor's report, and that such payment may be made without awaiting the ratification of said report.

R. K. ELLIOT,
*For Complainant.*
EDWARDS & BARNARD,
*For Def't Wright.*
JOHN E. NORRIS,
*For Wm. H. Brereton.*
BRADLEY & DUVALL,
*For Mrs. Batchelor.*

289 *Exceptions to Aud't's Report. Filed Jul- 31st,* 1881.

In the Supreme Court of the District of Columbia, this 31st day of July, 1880.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et al.* } No. 6617. Doc. 19.

And now comes Mary A. Batchelor, one of the defendants herein, and, as such defendant and as purchaser at the sale made by the trustee, files these her exceptions to the report of the auditor and the account of the trustee and the distribution of the proceeds of sale, as stated by the auditor.

She excepts to the failure of the auditor to charge (in Schedule A) the entire tax for the year ending June, 1880, upon the fund.

She excepts to the following allowances in Schedule B (distribution), viz:

1. To the application of one-half the cash pay't (being the share of compl't & heirs of Sam'l Brereton) to the indebtedness of J. H. Wright, $2,256.82.

2. To the application of one-half of first deferred pay't (being the share of compl't & heirs of Sam'l Brereton) to the indebtedness of J. H. Wright, $2,625.56.

290 3. To the application of part of second deferred payment to balance of indebtedness of Wright, $2,224.96.

4. To the application of part of second deferred pay't to complainant (commutation of life estate), $205.46.

5. To the application of part of second deferred pay't to James I. Brereton, $308.00.

6. To the application of part of third deferred payment to compl't (commutation of life estate), $1,140.67.

7. To the application of part of third deferred pay't to James I. Brereton, $1,711.02.

8. To the application of part of fourth deferred payment to complainant (commutation of life estate), 1,185.90.

9. To the application of part of fourth deferred payment to James I. Brereton, $1,778.85.

This exceptant claims that the deed of trust to Wm. H. Ward, dated June 1st, 1874 (mentioned in Schedule E), is a good and valid lien as well upon the moiety of or interest in the land described in the bill held by Peter Hannay, trustee, as upon that of Wm. H. Brereton, and she therefore excepts to the allowance of each and every item in said report and account which treats the said deed of trust as invalid, and not a lien upon the moiety or interest
291 held by Hannay, and she moves the court to confirm the account as stated in Schedule E, and so much of Schedule B as is not excepted to.

BRADLEY & DUVALL,
*Sol'rs for Mary A. Batchelor.*

292 *Exceptions to Aud't's Report by Wm. Brereton. Filed Aug. 2d, 1880.*

In the Supreme Court of the District of Columbia, holding an Equity Court.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et al.* } No. 6617. Equity.

Exceptions of William H. Brereton, one of the defendants in the above-entitled cause.

1. This defendant, by his solicitor, excepts to so much of the report of the auditor as relates to the $1,000.00 note, which was a final settlement between him and the said Samuel Brereton, deceased, of the $10,000 loaned by Mr. Batchelor. And he says that in the case made by the testimony the statute of limitations is no bar to his claim.

2. That on the testimony given before the auditor, he is entitled to compensation for his services, as stated in his answer to the bill, for the care, &c., of the premises, and that in equity the mere fact of not making demand is no bar to his right of recovery.

JOHN E. NORRIS,
*Sol. for W. H. Brereton.*

293 *Order Overruling Part and Confirming Part of Aud't's Report. Filed Nov. 11th, 1880.*

In the Supreme Court of the District of Columbia, sitting in Equity.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et al.* } No. 6617. Doc. 19.

This cause came on regularly for hearing upon the exceptions to the report of the auditor upon the distribution of the proceeds of sale, and the said exceptions were argued by counsel for the respective parties and duly considered by the court; whereupon it is this 11th day of November, A. D. 1880, by the court ordered, adjudged, and decreed that the exceptions filed in behalf of Wm. H. Brereton be, and they are hereby, overruled; that the exceptions filed in behalf of Mary A. Batchelor be, and they are hereby, sustained, so far as the same relate to the deed of trust, so-called, of June 1st, 1874, which the court here finds and declares to be a valid lien and charge upon both moieties of the land sold, and entitled to payment out of the proceeds of the sale of the property (sub-
294 ject only to the taxes and expenses, the deed of trust of February 1st, 1873, on Wm. H. Brereton's moiety, and the deed of trust of January 15, 1876, in favor of Wm. H. Wright, on the late Samuel Brereton's moiety), and so far as the said report appropriates the proceeds of sale in favor of Sarah A. Brereton and James I. Brereton as against the said deed of trust of June 1st, 1874, the said report is overruled; in all other respects the said report is hereby ratified and confirmed, and the trustee, R. W. Tyler, is hereby directed to distribute the proceeds of sale in accordance with said report, as by this decree modified.

W. S. COX.

295 *Appeal to Gen'l Term, Nov. 15th, 1880.*

BRERETON
*vs.*
BRERETON. } 6617. Equity Docket 19.

Enter appeal to general term from decree of special term sustaining exceptions of Batchelor to auditor's report.

ELLIOT & ROBINSON,
*For Complainant.*

Appeal as ordered entered November 15, 1880, by the clerk.

296 *Appeal Bond. Filed Nov. 29, 1880.*

In the Supreme Court of the District of Columbia the — day of November, 1880.

SARAH A. BRERETON, Plaintiff,
*vs.*
JAMES I. BRERETON, Defendant. } No. 6617.

The plaintiff, having appealed to the general term from the decree

pronounced herein on the 11th day of November, 1880, in the equity court, and Richard W. Tyler, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to satisfy and pay all costs arising on the appeal.

SARAH A. BRERETON, *Appellant.*
B. W. TYLER, *Surety.*

W. S. COX.

297 *Appeal from Decree to Gen'l Term, Nov.* 26, 1880.

BRERETON
*vs.*
BRERETON. } 6617. Equity Docket 19.

Enter appeal to the general term from so much of the decree in this case as disallows part of Mrs. Batchelor's exceptions to the report of the auditor.

BRADLEY & DUVALL.

Appeal as ordered entered Nov. 26, 1880, by the clerk.

298 *Stipulation as to Payment of Moneys to Wright. Filed Dec. 24th,* 1880.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et al.* } No. 6617. Equity.

It is hereby stipulated and agreed between the parties hereto (not waiving any rights that either party may have under the appeals herein) that the cash now in the hands of the trustee for distribution to indebtedness due to Mary A. Batchelor from the cash payment herein of $2,256.82 shall be paid to John H. Wright or his solicitors of record, to be credited by him upon the amount distributed by the auditor's report to him from the first deferred payment, due in January, 1880, and the same to be now credited by the trustee herein on the note of Mrs. Batchelor due then to said trustee.

And, further, that the cash now in the hands of the trustee, distributed by said report to John H. Wright, be now paid to him, or to his solicitors of record.

299 Dated and signed this 24th day of December, 1880.

EDWARDS & BARNARD,
*Solicitors for John H. Wright.*
BRADLEY & DUVALL,
*For Mrs. Batchelor.*

As Mrs. Sarah A. Brereton & James I. Brereton do not appear by Schedule B to have any interest in the distribution there made, I have no objection to the foregoing order.

Dec. 24. R. K. ELLIOT.

300 *Order to Pay Over Moneys to John H. Wright, or to his Sol'rs. Filed Dec.* 24, 1880.

In the Supreme Court of the District of Columbia.

SARAH A. BRERETON
*vs.*
JAMES I. BRERETON *et al.* } No. 6617. Equity.

Upon hearing the stipulation of parties, this day filed herein, and on motion of Edwards & Barnard, solicitors for defendant, John H. Wright, it is this 24th day of December, 1880, ordered, at chambers, that R. W. Tyler, trustee herein, pay over the moneys now in his hands for distribution under Schedule B of the auditor's report to said Wright or his solicitors of record, and credit $2,256.82 upon the first note of Mary A. Batchelor, due in January, 1880, as per stipulation aforesaid.

W. S. COX, *J.*

301 *Order Trustee to enter Credit on Note of Purchaser. Filed Jan. 11th*, 1881.

In Supreme Court of District of Columbia.

SARAH A. BRERETON
*vs.*
JAS. I. BRERETON *et al.* } No. 6617. Equity.

Ordered, this 11th day of January, A. D. 1881, that R. W. Tyler, trustee in this cause, credit the note of the purchaser, Mary A. Batchelor, due Jan'y 9–12th, with the sum of two thousand six hundred and twenty-five $\frac{56}{100}$ dollars ($2,625.56), being the share of W. H. Brereton applied by the auditor to the indebtedness due said Batchelor, such credit to be in addition to the credits heretofore by order directed to be entered thereon.

W. S. COX, *J.*

302 *Final Decree in General Term. Filed Apr. 12th*, 1881.

In the Supreme Court of the District of Columbia. In General Term.

SARAH A. BRERETON
*v.*
JAMES I. BRERETON *et al.* } No. 6617. Equity Docket.

This cause came on to be heard at this term, and was argued by counsel and submitted to the court, and upon consideration thereof it is, this 12th day of April, 1881, ordered, adjudged, and decreed that the decree of the court in special term of November 11th, 1880, in so far as it sustains the nine exceptions filed on the 31st day of July, 1880, on behalf of the defendant, Mary Ann Batchelor, executrix, to the report of the auditor last filed in this cause (in relation to the effect of the complainant's signature to the deed of trust in

in evidence, dated June 1, 1874, and her acknowledgement thereof), be, and the same is hereby, reversed; that said exceptions be, and they are hereby, overruled, and the auditor's report in all things confirmed; and that in other respects the decree below be, and it is hereby, affirmed. From this decree the defendant, Mary
303 Ann Batchelor, in open court, prays an appeal to the Supreme Court of the United States, which is allowed.

By order of the court.

D. K. CARTTER,
*Ch'f Justice.*

304 *Appeal Bond. Filed May 23rd*, 1881.

In the Supreme Court of the District of Columbia, the 21st day of May, 1881.

SARAH A. BRERETON *et al.*
*vs.*
JAS. I. BRERETON *et al.*
No. 6617. Equity. In Error.

Know all men by these presents, that we, Mary A. Batchelor, as principal, and Lewis L. Burnett, are bound unto the above-named Sarah A. Brereton and James I. Brereton in the sum of five thousand dollars, to be paid to the said Sarah A. Brereton and James I. Brereton, her and his executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this —— day of May, 1881.

Whereas the above-named Mary A. Batchelor hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Mary A. Batchelor shall prosecute her said appeal to effect and answer all damages and costs if she shall fail to make good *his* plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

MARY A. BATCHELOR. [SEAL.]
L. L. BURNETT. [SEAL.]

Sealed and delivered in presence of—
As to Mrs. Batchelor—
A. H. BENDER.

As to L. L. Burnett—
J. P. GARDNER.
SAM'L C. MILLS.

The within bond is hereby approved this 22d day [of] May, A. D. 1881.

D. K. CARTTER,
*Ch'f Justice.*

305 AUTHENTICATION OF RECORD.

*Clerk's Certificate.*

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court, this 10th day of October, 1881.

[SEAL.] R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR., *Assistant Clerk.*

*Justice's Certificate.*

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of said court, to be in due form.

Witness my hand and seal, this 10th day of Oct., 1881.

[SEAL.] D. K. CARTTER;
*Chief Justice.*

*Clerk's Certificate to Justice's Official Character.*

I, J. R. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court, this 10th day of October, 1881.

[SEAL.] R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR., *Assistant Clerk.*

306 In the Supreme Court of the United States.

MARY ANN BATCHELOR, Appellant,
*vs.*
SARAH A. BRERETON *et al.*, Appellees. } No. 396.

It is hereby stipulated that the following papers shall be omitted from the printed record in this cause:

First. All testimony filed in the cause taken by Examiner Bailey, and filed October 21st, 1879.

Second. All copies of deeds and deeds of trust filed in exhibits, or otherwise, excepting the deed in trust to Hannay, liber J. A. S. 192, folio 405, and the deed of trust to Wm H. Ward, liber 756, folio 18.

Third. Exhibit "A," being the plat of the ground & premises filed October 21st, 1879; all papers relating to the appointment of a receiver, and all vouchers filed with auditor's report of July 2, 1880; and the testimony of J. W. Wright, J. B. Byrne, W. H. Ward, W.

H. Taylor, and W. H. Brereton, Jr., and filed with the auditor's
307 report of July 2nd, 1880.

A. R. WORTHINGTON,
*Of Counsel for Appellees.*
A. B. DUVALL,
*Of Counsel for Appellant.*

[Endorsed:] Sup. Court U. S., 1883, Oct'r term. No. 396. Mary Ann Batchelor, app'l't, *vs.* Sarah A. Brereton & *al.* Stipulation to omit parts of record in printing. Office Supreme Court U. S. Filed Mar. 31, 1884. James H. McKenney, clerk.

Endorsed on cover: Dist. of Columbia, Sup. Court. No. 84. Mary Ann Batchelor, appellant, *vs.* Sarah A. Brereton and James I. Brereton. Filed October 13, 1881.

112-296

# In the Supreme Court of the United States.

OCTOBER TERM, 1884.

MARY ANN BATCHELOR, *Appellant*,

vs.

No. 84.

SARAH A. BRERETON AND JAMES I. BRERETON.

**Appeal from the Supreme Court of the District of Columbia.**

**Appellant's Statement of the Case.**

BRADLEY & DUVALL,
*Solicitors for Appellant.*

JUDD & DETWEILER, PRINTERS.

# In the Supreme Court of the United States.

OCTOBER TERM, 1884.

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MARY ANN BATCHELOR, *Appellant*,

*vs.*

SARAH A. BRERETON AND JAMES I. BRERETON.

No. 84.

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**Appeal from the Supreme Court of the District of Columbia.**

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## Appellant's Statement of the Case.

In the year 1859, William H. Brereton and Samuel Brereton, brothers, were seized and possessed as tenants in common in fee simple of that large and valuable property, situated at the southwest corner of the square No. 455, on the east side of 7th street, and directly opposite to the southeast corner of the Department of the Interior, in the City of Washington.

It appears (Rec., p. 8,) that on the 29th of September, 1859, Samuel Brereton, and his wife Sarah Ann, the complainant in this cause, in the court below, undertook to convey to one Peter Hannay, the one-half undivided interest of the said Samuel in that property, upon certain trusts which will be more particularly noticed further on. It is

proper to observe here, that that trust deed was acknowledged before one magistrate only, and was consequently inoperative as against creditors and purchasers.

In consequence of the alteration by the proper authorities of City of Washington, of the grades of 7th street, and F street on both of which streets this property fronted, a portion of the building fell, and the grade being carried below the sewers it became necessary to construct new sewers. The two Brerétons were without means to construct the improvements on the property, and had to borrow money for that purpose. (See testimony of W. H. Brereton, Rec. 47, 48 49.) Up to that time, and ever after the taxes on the property were paid out of the rents, and the residue divided between the two brothers, so long as Samuel lived, and between William and said Sarah Ann after the death of Samuel. (Rec. same pages.)

In order to make the property productive, the brothers made some arrangement with each other, (which is not material to the question in this cause,) by which William H. Brereton borrowed from Charles Batchelor, appellant testator, the sum of $10,000, giving his own note for it, and securing its payment by a deed of trust on his moiety of this property. The validity of that lien was established in the court below, and the money was paid out of the proceeds of the sale made in this cause.

The two brothers then borrowed the sum of $6,000 from a Mr. Wright, and gave a deed of trust to secure that on the whole property. That also has been paid out of the proceeds of sale in this cause.

These sums proved insufficient to restore the property, and on the 1st of June, 1874, (Rec. 10,) the two brothers borrowed from said Charles Batchelor the further sum of $3,500, gave their joint promissory note for it at three years with interest at 10 per cent., and united in conveying to William H. Ward this property to secure the payment of that note

and interest. Sarah A. Brereton, the appellee here, was not named as a party in that deed; but she signed and sealed it, and acknowledged it before two justices as her act and deed, after the deed had been fully explained. This deed and the surrounding circumstances under which it was executed give rise to this controversy, the court below having decreed against its validity. (See Rec. 62.)

The Breretons having failed for two years to pay the taxes, and being largely in arrear in payment of the interest [for it will be observed that Sam Brereton, having died before this default, Sarah Brereton had paid her portion of the interest on this $3,500 note without objection], and Charles Batchelor having died, leaving the appellant his executrix, she called upon Ward, the trustee in the deed of trust to secure the $10,000 note, and also that to secure the $3,500, to sell the property. He advertised it for sale (Rec., 13), and on the 4th of Feb'y, 1879, Mrs. S. A. Brereton filed the bill in this cause to restrain that sale, and it was restrained by order of the court.

The cause went on regularly to a decree (Rec., 25) appointing a trustee to make a sale of the property, and to bring the proceeds into court for distribution. This was done. The trustee reported his sale, and the court confirmed it. (Rec., 35.) The cause was referred to the Auditor to state the trustee's account, and the "*legal distribution of the fund among the parties in interest*" The Auditor made his report (Rec., 36 *et seq.*) The portion of it touching this claim of $3,500 will be found on pp. 38, 39. The Auditor rejected the claim, and afterwards he was confirmed in the General Term. (Rec, 62.) From this, the final decree, this appeal is prayed.

Two other facts appearing in the record remain to be stated, to wit: It appears by the Auditor's report (Rec., 42, and Schedules B. C. and D), that nearly the whole of the portion of W. H. Brereton in the sale made by the trustee

was consumed in payments to satisfy the $10,000 debt to Batchelor, and the $6,000 due to Wright, and the portion of Samuel was paid, in part, to Wright, and the residue to Samuel's widow and her son, and this report left a small item only to go to the $3,500 debt.

The other fact is that the whole of the $10,000, $6,000, and $3,500 loans, making $19,500, was consumed in the reconstruction of the buildings and sewers. (Rec., 49, 50.) And during that time there could have been no rents paid, a fact of which S. A. Brereton must have been cognizant.

## Brief.

I.

Our first position is that Mrs. Sarah A. Brereton took no interest in or title to this property under the pretended trust deed to Hannay; and that deed was void as against creditors and purchasers.

The deed was executed under the acts of Congress of May 31, 1832, 4 Statutes at Large, p. 520, and April 20, 1838, 5 Stat., 226, which prescribe certain requisites to a good deed before it can pass any interest or estate in land, and give the forms of acknowledgement when it is executed by husband and wife.

The acknowledgement must be before two magistrates. Here there was only one. Such a deed cannot lawfully be recorded, and the record of this deed was no notice to creditors or purchasers. It is immaterial to us whether it did or not give rise to any claim which a court of equity could entertain as between husband and wife. That case is not here. We hardly deem it necessary to cite authorities to this court, on a proposition so clearly elemental.

Wade on Law of Notice, § 112, 124, 138, 139, and cases cited.

II.

But if we shall find ourselves mistaken as to this point, we say if that deed is valid it was for the purpose of providing for the maintenance and support of the wife, with power "at any time hereafter, upon the written request of said Sarah A. Brereton, and the written consent of the said Samuel Brereton to sell, dispose of or convey the said undivided pieces or parcels of ground and premises absolutely in fee simple, *in trust*, or for such term or time, and for such uses and purposes, and to such person and persons as the said Sarah A. Brereton, with the written consent of the said Samuel Brereton may request or direct in writing as aforesaid," (Rec., 9), and the deed of 1 June, 1874, to Wm. H. Ward is, in equity at least, a valid execution of that power so far as the *cestui que trusts* are concerned. If she had been named in the deed as a party to it, she would not have been more completely bound than she was by this deed.

1. She was not conveying a legal estate. She had none. She had but a power coupled with an interest, and no formal act is prescribed for the exercise of that power, except that it must be in writing, accompanied by her husband's consent, also in writing. Now, in this particular, her husband executes a formal deed, and she signs and seals it. If that had stood alone, equity would have held her to it. But that is not all. In due form of law, and after having "been examined privily and apart from her husband, and *having the deed aforesaid fully* explained to her, she acknowledged the same to be *her* act and deed, and declared that she had willingly signed, sealed and delivered the same and she wished not to retract it;" she thereby adopted it as her act and deed, and did so in writing.

What was it she thus willingly signed, sealed and delivered? Was it not clearly an authority to Hannay to convey to Ward according to the terms and for the purposes

set out in that deed? Can it make any difference that she did not make a request in writing addressed to the trustee accompanied by her husband's written consent, when she united with him in an instrument which amounted to the same thing, and all this in writing? She says she knew the contents of the deed, and it was her act and deed.

And this court has said, in *Young* vs. *Duvall*, 109 U. S., p. 577, to what credit such a certificate of acknowledgment as this is entitled. In her bill she does not set up or pretend that there was any fraud, surprise, undue advantage, accident, or mistake in her executing that deed. She does not pretend that it was not intended to be the execution of the powers given to her in the Hannay deed. All she says is "that said conveyance does not convey, nor purport to convey any right, title, interest or estate of your oratrix in and to any property." (Rec., 4.) But she does not set up or pretend that it was not intended to give the right of Batchelor or Ward to demand from Hannay a deed so as to perfect his security.

*Thompson* vs. *Lovrein*, 82 Pa. St., 437.
*Jamison* vs. *Jamison*, 3 Whart., 469.
*Elliott* vs. *Sleeper*, 2 N. H., 525.
*Coryell* vs. *Dunton*, 7 Barr., 530.
*Lancaster* vs. *Dolan*, 1 Rawle 231.
Tyler on Coverture, § 314, 315.
Ladd vs. Ladd 8 How. 10. 57

2. In this view of the case, we must consider the surrounding circumstances. See Justice Strong, *Blake* vs. *Hawkins*, 98 U. S., 315. She had the right to receive the whole income of her husband from his half of the estate, except so far as she had not restrained herself by her order to Hannay (Rec., 10), and this was, we think, revocable. The buildings were dismantled. No rent could be received from them. Money had to be borrowed to restore them.

For whose benefit? Her husband had to borrow the money for that purpose. Did she not know it? Did she not unite in this deed, to enable him to borrow this money in order to secure the means for her maintenance and support? Besides she was examined as a witness (Rec. 53).

If she knew that her uniting with her husband in that deed of 1 June, 1874, was "wholly unnecessary and without effect," as she says in her bill it was, then it was a fraud, and she can have no standing in this court, when she seeks to set aside her own fraudulent act, to the prejudice of an another person's rights.

*Dundas* vs. *Hitchcock*, 12 How., 27.
*Bein* vs. *Heath*, 6 How., 247.
*Brandt* vs. *Va. Coal Co.*, 93 U. S., at 336.

## Finally.

Whenever the form of executing a power is substantially complied with, and the intent to execute it is clearly shown in the act itself, and by the surrounding circumstances, a court of equity will support the act as the execution of the power *ut res magis valeat quam pereat*. Equity will correct the mistake or supply the defect in favor of a *bona fide* purchaser for valuable consideration, or a creditor, such as this appellant.

1 Sugden Powers, 184, 208, 373, 385, 426, 436;
2 Do 103, 104, 125, 127–129, 136;
1 Story Eq. Jurisp., § 169–174;
1 Leading Cases Eq., (White & Tudor,) 380;
1 Jones Mortgages, § 168–169 and cases.

The point seems to be completely covered in this court.

*Blake* vs. *Hawkins*, 98 U. S., 315–326;
*Warner* vs. *Conn. Mut. L. I.*, 109 U. S., 357.

Equity will at least treat this deed of trust as a contract, and as such, enforce it against the appellee; she must do equity.

She has received the fruits of the transaction, in the preservation and betterment of the property, and she is not permitted to deny its validity whilst retaining its benefits.

*Tiernan* vs. *Poor*, 1 G. & J., 216;
*Brundige* vs. *Poor*, 2 G. & J., 1;
*Brandt* vs. *Va. Coal Co.*, 93 U. S., 326–336.

We respectfully submit that the court below erred in its decree in respect to said deed of trust.

BRADLEY & DUVALL,
*Solicitors for Appellants.*

112-396

# Supreme Court of the United States.

OCTOBER TERM, 1884.

NO. 84.

112-396

MARY ANN BATCHELOR, *Appellant*,

*vs.*

SARAH A. BRERETON & JAMES I. BRERETON, *Appellees*.

**Brief for Appellee, Sarah A. Brereton.**

A. S. WORTHINGTON,
LEIGH ROBINSON,
*Of Counsel.*

WASHINGTON, D. C.:
R. O. POLKINHORN & SON, PRINTERS.
1884.

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

---

MARY ANN BATCHELOR,
*Appellant,*

*vs.*

SARAH A. BRERETON *et al.*
*Appellees.*

No. 84.

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## Brief for Appellee, Sarah A. Brereton.

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On May 1st 1851, Samuel Brereton, Sr., conveyed to his son, Wm. H. Brereton, certain premises (being parts of lots 8 and 9, in square 455, Washington, D. C.), in trust for Mary Ann the wife of said Samuel Brereton, Sr., for her life. with remainder in fee for the use and benefit of said William Brereton and his brother, Samuel Brereton, Jr., as tenants in common. (Rec., p. 1.)

On May 26, 1853, after the death of Mary Ann Brereton, the said Samuel Brereton, Sr., by another deed, conveyed to the defendants, Wm. H. and Samuel Brereton, Jr., in fee simple, all of lot (9), not previously conveyed to Wm. Brereton by the deed above mentioned. (*Id.*, p. 2.)

By a deed of Oct. 4th, 1859, recorded, in 192 J. A. S., f. 405, (Rec., pp. 8 and 2,) the complainant, Sarah A. Brereton,

and her husband, Samuel Brereton, Jr., conveyed to Peter Hannay, "upon the trusts hereinafter mentioned and declared, and *for no other use, trust, or purpose whatsoever,*" the undivided one-half interest of the said Samuel, in the premises described as part of lot (9), square (455), in Washington, D. C., "in trust for the sole use and benefit of Sarah A. Brereton, of the City of Washington, aforesaid, and the wife of the said Samuel Brereton, during her natural life, free from all ownership, control, and obligation to and for her said husband, * * and upon this further trust at anytime hereafter upon the written request of said Sarah A. Brereton, and the written consent of said Samuel Brereton to sell, dispose of, or convey the said undivided pieces or parcels of ground and premises absolutely, in fee simple, in trust, or for such term or time, and for such uses and purposes, and to such person and persons as the said Sarah A. Brereton, with the written consent of the said Samuel Brereton may request or direct in writing as aforesaid. *

* And should the said Sarah A. Brereton survive the said Samuel Brereton, then, and upon and after the decease of the said Sarah A. Brereton, the said trustee, Peter Hannay, his executors, &c., shall hold the written described pieces, &c., in trust for the use and benefit of the heirs of the said Samuel Brereton, or in trust for whomsoever he, the said Samuel Brereton, may direct by last will and testament, or other instrument of writing." (Rec., p. 9.)

It should be stated, that prior to the execution of this deed, viz, Sept. 16, 1850, it was enacted, that in all cases in which acknowledgements might be taken before any justice or justices of the peace of any State or Territory. Such acknowledgemants might thereafter be taken or made before any notary public duly appointed in any State or Territory, 9 Stat., p. 458; and by an act of July 29, 1854, the above provision was expressly extended to the District of Columbia. (10 Stat., 315.)

On June 1st, 1874, William H. and Samuel Brereton, as the parties, and the only parties of the first part, conveyed to Wm. H. Ward, of the second part, the premises described as parts of lots (8) and (9), in square (455), in trust to secure the payment of a promissory note of the said Wm. H. and Samuel Brereton, in the sum of $3,500, payable to Charles Batchelor three years after June 1st, 1874, with interest at the rate of 10 per cent. per annum. (Rec., p. 11.)

The deed provides that in case of a sale of the property to meet the indebtedness secured thereby, after payment out of the proceeds of sale, of the indebtedness, costs, cominissions, &c., that the trustee shall "pay the remainder, if any, to said Wm. H. and Samuel Brereton, their heirs and assigns." (Rec., p. 12.)

This deed is signed and sealed by the parties of the first part, the said Wm. H. and Samuel Brereton. There is also appended to it the name of S. A. Brereton, opposite her seal, although she is nowhere mentioned or referred to in any previous portion of the deed. Had she been a party to the deed, or represented in any part thereof as undertaking to grant anything thereby, the certificate of her acknowledgement which follows might be considered in due form, but as this is obviously not the case, it is plain that this certificate was annexed by a Justice of the Peace, who was ignorant that Mrs. Brereton was not one of the grantors named therein, who therefore could neither have read it himself, nor explained it to her, and whose certificate, that she appeared before him as one of the parties to the deed in question, cannot contradict the patent fact that the only parties to the deed are Wm. H and Samuel Brereton of the first part, and Wm. H. Ward of the second part.

The Auditor of the Court treated this conveyance "as that of Wm. H. Brereton alone, and as not conveying or affecting the interest or estate of the said Sarah A. Brereton, and the distribution *to* (?) the indebtedness secured by this

deed of trust is, therefore, made from the share of the said Wm. H. Brereton, so far as the same is available." (Rec p. 39.)

To this report exceptions were filed (Rec. p. 58), and at the hearing of the same, it was, on November 11th, 1880, ordered and decreed "that the exceptions filed in behalf of Wm. H. Brereton be, and they are hereby, overruled; that the exceptions filed in behalf of Mary A. Batchelor, be, and they are hereby, sustained, so far as the same relate to the deed of trust, so called, of June 1st, 1874, which the court here finds and declares to be a valid lien and charge upon both moieties of the land sold, and entitled to payment out of the proceeds of the sale of the property (subject only to the taxes and expenses, the deed of trust of February 1st, 1873, on, &c.), and so far as the said report appropriates the proceeds of sale in favor of Sarah A. Brereton and James I. Brereton as against the said deed of trust of June 1st, 1874, the said report is overruled." (Rec., p. 60.)

From this decree, sustaining the exceptions of Batchelor to the Auditor's report, to the extent referred to, the complainant Sarah A. Brereton appealed to the General Term, (*id.*), which, on April 12th, 1881, reversed the decree of the Special Term, so far as it sustained the exceptions of the defendant, Mary Batchelor, executrix, to the report of the Auditor ("in relation to the effect of the complainant's signature to the deed of trust in evidence dated June 1st, 1874, and her acknowledgment thereof"), and overruled the said exceptions and confirmed the Auditor's report. (Rec. p. 62.) From this decree the present appeal was taken. The record shows the death of Samuel Brereton, Jr., intestate, leaving the complainant, his widow, and the defendant James I. Brereton his only heirs at law.

The question presented by this appeal, is whether the complainant Sarah Brereton and her infant son James I. Brereton are bound by this deed of June 1st, 1874, or

whether the same is void as to the complainant and the said infant defendant. The legal title of the undivided moiety, in controversy, was vested in Hannay upon the trusts specified in the deed of October 4th, 1859, which was recorded long before the deed of June 1st, 1874, was made, and the power of disposing of the estate was, in terms, a limitation upon the trustee. He could not grant or convey, save "upon the written request of the said Sarah A. Brereton," and "the written consent of the said Samuel Brereton." This was the condition of the title when the trust of June 1st, 1874, was executed. This deed expressly declares—

1st. That it was made by Wm. H. and Samuel Brereton, parties of the first part;

2d. That it was made to secure an indebtedness of the said Wm. H. and Samuel Brereton;

3d. That it conveys "*all the estates, right, title, interest, and claim whatsoever, either at law or in equity, of the said parties of the first, of in and to the said pieces or parcels of land and premises.*"

It is clear that no right of Sarah A. Brereton can be affected by this paper, unless her mere signature thereto, imports of necessity her adoption of language, which she nowhere employs, and her co-operation in a grant and conveyance which is expressly restricted to the right, title, interest, &c., *of the said parties of the first part*, viz: Wm. H. and Samuel Brereton.

Here the only grantors are Wm. H. and Samuel Brereton, the grantee is Ward, and the subject of the grant, so far as an undivided moiety in lot (9) was concerned, was not vested in either grantor, legally or equitably. To import Sarah A. Brereton into this deed as a grantor of this otherwise ungranted moiety, is to create a grant where none exists.

The deed in question not being, *prima facie*, the deed of the complainant, she was not required to explain the circumstances under which, and the purpose for which, she

signed it at the time of affixing her signature. If a blank paper signed, sealed and delivered, and then written upon, is no deed (*Duncan* vs. *Hodges*, 4 McCord, 239; *Davenport* vs. *Sleight*, 2 Dev. & B. L., 381), must not a paper be equally ineffective to convey the interest of one, as to whom and whose interest it is a blank? Can a deed, which purports exclusively to convey the inteaest of the parties of the first part, who are Wm. H. & Samuel Brereton, be construed to convey some other interest which it does not undertake to convey, of some other party, not of the first part, nor of any part? Can a deed be valid against one who has been omitted as a grantor from the grant and the whole body of the deed? Can there be a grant of one who is not a grantor? The parties to a deed are bound by what? The recitals in the deed. The recital in this deed is that the parties of the first part (Wm. H. & Samuel Brereton) convey all their right, &c. The rule is that the recitals will control general words elsewhere in the deed. Can it be held that the recitals themselves may be controlled by imagined words imported into the deed by implication? Suppose a married woman to have given her assent to a deed containing specific recitals, can she, by some ingenuity of logic, be made the grantor in a different deed containing a wholly different recital?

The separate real estate of a married woman can be disposed of, only in such mode, if any, as may be prescribed by the instrument creating the estate; or unless prohibited by such instrument, in the mode prescribed by law for the alienation of real estate by married women. *Radford* vs. *Carwile*, 13 W. Va., 669; *McChesney* vs. *Brown*, 25 Gratt., 393; *Hawley* vs. *Troyman*, 29 Id., 728.

Where the form of a married woman's transfer of her real estate prescribed by the statute has not been observed, the fact that she has received the purchase money in consideration of her agreement, or induced the purchaser to make valuable improvements thereon, is insufficient to pass

title. *Innis* vs. *Templeton*, 95 Pa. St., 262. "A deed cannot bind a party sealing, unless it contains words expressive of an intention to be bound." *Catlin* vs. *Ware*, 9 Mass., 218. Therefore, where, to a conveyance of land by a husband, the wife affixes her signature and seal, her name not being otherwise mentioned in the deed, it was held that she had not thereby barred her right of dower. Id. "Where one jointly with others, signs, seals, and delivers an instrument, supposed to be a perfect deed, but his name appears in no other part thereof, his interest in the premises described in such instrument is not thereby conveyed." *Peabody* vs. *Hewitt*, 52 Me., 33. "A conveyance of real estate executed and acknowledged by a husband and wife, but in the body of which the wife's name is not inserted, does not convey the interest of the wife in the premises." *Cox* vs. *Wells*, 7 Blackf., 410; S. P. *Davis* vs. *Bartholomew*, 3 Ind., 491. "A deed of land executed by husband and wife, without any words of grant or warranty on the part of the wife does not pass her estate in the land." *Melvin* vs. *Proprietors*, &c., 16 Pick., 137; *Lufkin* vs. *Custis*, 13 Mass., 223. "Where the wife joins her husband only in the testatum clause, and in the execution of the deed, the husband's title alone is passed to the grantee." *City of Cincinnati* vs. *Lessee*, 7 Ohio St., 37. "*A feme covert, owner of the fee of land, does not pass her title by a deed executed by husband and wife, unless she joins her husband in the granting part of the deed. Though it was the intention of the husband and wife to execute a deed conveying the fee, a Court of Chancery will not, as against the wife, correct the mistake in the instrument of conveyance, and compel the execution of a perfect deed.*" *Purcell* vs. *Goshorn*, 17 Ohio, 105. Where husband and wife were both mentioned as parties of the first part, and the deed was signed and was duly acknowledged by both, but the name of the wife did not appear otherwise and

the husband only named as grantor: Held that the instrument did not even amount to an equitable charge on her estate. *Whiteley* vs. *Stewart*, 63 Mo., 360.

If a deed be signed and sealed by a married woman and her husband, and the certificate of her acknowledgment is in due form, *yet, if she is not on the face of the deed one of the grantors therein*, such deed is inoperative to convey any interest she may have in the real estate conveyed thereby, or to relinquish her contingent right of dower in the lands therein named. *Laughlin* vs. *Freeman*, 14 W. Va., 322. These are so many reiterations of the elementary doctrine, stated by Story, J., that "a wife, by joining with her husband in the deed, may convey her estate, yet the deed must contain apt words to make her a grantor, otherwise the deed conveys only the right of her husband. *Powell* vs. *Monson*, 3 Mason, 347. In the *Agricultural Bank* vs. *Rice*, this court laid down the same doctrine, in the following terms: "If a married woman sign, seal and acknowledge a deed, in which there are no words of grant on her part, but only by her husband, who is also a party to the deed, it is as to her, utterly void, and is not validated by her receipt of the consideration money after she became discovert." 4 How., 225. "In order," said TANEY, C. J., "to convey by grant, the party possessing the right must be the grantor, and use apt and proper words to convey to the grantee, and merely signing, sealing and acknowledging an instrument in which another person is grantor is not sufficient." Id. It is on the same principle, that "if a contract in writing, purporting to be between two persons, and containing mutual and dependent stipulations, to be by them severally performed, is signed by them and also by a third person, in such a manner, as not to indicate the capacity in which he is a party to the contract, no action can be maintained thereon, by one of the parties named in the body of the contract against him and the other party jointly; and parol evi-

dence is inadmissable to show that he signed it intending to be bound, and as surety for the other defendant." *Blackmer* vs. *Davis*, 128 Mass., 538.

It has been sufficiently shown that the undivided moiety belonging to Mrs. Brereton has not been disposed of, in the mode prescribed by law for the alienation of the real estate of married women; has it then, been disposed of in the mode prescribed by the instrument creating the estate? Clearly not.

That instrument places the legal title in Peter Hannay, authorizes him only to convey it, and only authorizes him to convey it, "upon the written request of said Sarah A. Brereton and the written consent of said Samuel Brereton." There is no conveyance whatever by Peter Hannay, no "written request of said Sarah A. Brereton" to him or to any one else to convey the same, and no "written consent of said Samuel Brereton," that the trustee or anybody else should convey the undivided moiety of his wife, unless such consent is implied by an assumption of the right to convey the estate of another person. Surely, then, where the separate estate of a married woman is not so held as to give her the absolute power of disposition over it, but is held in trust for her during the term of her natural life, with remainder to the heirs of the grantor, and with only a limited power of disposition annexed thereto, that power will not be held to have been exercised to the prejudice of the life tenant, and the remainder man, by a deed not made by the tenant of the legal estate, who alone had authority to make it, nor by the life tenant and tenant of the power, who alone had authority to direct it; and is in every other respect a manifest departure from the only mode of disposition prescribed by the instrument creating the estate.

The law on this subject is plain and familiar, where a power of sale is given to trustees, although to be executed at the request of the tenant for life, it is discretionary in

them whether they will exercise the power. *Thomas* vs. *Deering*, 1 Keen., 729. Neither will a Court of Equity control a trustees' discretion and compel him to consent. *Brereton* vs. *Brereton*, 2 Ves., 87.

> "Where a *feme sole* makes a deed of marriage settlement of her separte estate, whether real or personal, to a trustee for her sole and separate use, her power of disposition over the same, during coverture, is limited to the mode and manner prescribed by that instrument. And if she and her husband join in a mortgage conveying her estate, without the knowledge or consent of the trustee, and outside of the powers conferred, such deed is invalid." *Hardy* vs. *Holly*, 84 N. C., 661.

The power of a married woman over property settled to her separate use cannot exceed the limits prescribed in the deed of settlement. *Maurer's Appeal*, 86 Pa. St., 380. Her power over her equitable estate is strictly measured by the instrument creating it. *Masson* vs. *Prigg*, 51 Miss., 172. A *feme covert* holding separate property in real estate, by deed or will prescribing a particular mode of disposition, cannot dispose of it, in any other mode, although the deed or will does not negative such other mode expressly. *McClintic* vs. *Ochiltree*, 4 W. Va., 249; *Williamson* vs. *Beckham*, 8 Leigh, 20. A married woman cannot exercise any power over her separate estate, but such as is specially given, and it must be exercised in the mode prescribed. *Tarr* vs. *Williams*, 4 Md., Ch. 68; *Williams* vs. *Donaldson*, *Id.*, 44. The fact that she did not adopt the mode prescribed is to be considered, as opposed, more or less, o the idea that she intended to do so. *Lippincott* vs. *Stokes*, 2 Halstead, Ch. 122. Where a mode of alienation or of appointment is provided in the instrument creating the estate, that mode must be pursued, for it operates as a negative of any other, and is a paramount law governing and controlling every contract in relation to the property. *Cooke* vs. *Husbands*, 11 Md., 492.

Further, "it is a general rule that in the execution of a power, the donee of the power must clearly show that he means to execute it, either by a reference to the power or to the subject matter of it; for if he leaves it uncertain, whether the act is done in execution of the power or not, it will not be construed to be an execution of the power." Story Eq., § 106 2 a; *Owen* vs. *Switzer*, 51 Mo., 322; *Mory* vs. *Michael*, 18 Md., 228; Sug. on Powers, 301, 303, 4 Kent. Com., 385; *Garth* vs. *Townsend*, 7 L. R. Eq., 253; *Wilson* vs. *Jones*, 46 Md., 349.

Again, where the claim of title to real estate is solely through a power, it must, in order to be sustainable, be proved that such power was duly executed. If it is qualified by a condition precedent, it must appear that the condition was performed, or the attempted exercise of it will prove ineffectual. *Cleveland* vs. *Brown*, 27 Barb., 252. Such a condition precedent was the written request, and consent required by the deed to Hannay. "Where the trustees have a power of sale at the written request and direction of another party, they cannot obtain a decree for specific performance of a sale contracted by them, without showing such writing." (2 Perry on Trusts § 778.) *Adams* vs. *Broke*, 1 Young and Collyer, 627. "It is impossible to say that the consent of the tenant for life is merely formal matter, as between the tenant for life and the trustees, one is the check upon the other. The estate is not dealt with for purposes of sale, till there is a contract by the trustees with the consent of the wife." (*Id.*) Where trustees had power with the consent in writing of the wife to raise £1,500 for the husband, and they raised the money without a written consent, it was held, that a subsequent regular consent, by which the wife declared that the sale was with her full consent, was not valid, and the trustees were compelled to refund the money. 1 Sug. on Pow., 326;

*Bateman* vs. *Davis*, 3 Madd., 98; *Thomas* vs. *Deering*, 1 Keen, 729.

In *Waldron* vs. *Chasteney*, the court said: "Whenever a particular form is prescribed, no other may be adopted as equivalent to it. 2 Blatch ford, 66, S. P. *Kissam* vs. *Dickes*, 49 N. Y., 602; *Alley* vs. *Lawrence*, 12 Gray, 373. Where a person's consent is required to the execution of a power he cannot delegate the confidence reposed in him. *Hawkins* vs. *Kemp*, 3 East., 410. And, in this case, a subsequent deed properly executed and assented to, but not inrolled until after the settler's death, was also held void; for that everything required to be done in the execution of such a power must be strictly complied with, and must be completed in the lifetime of the person by whom it is to be executed; and also held that the defect of one deed could not be supplied by the other. "Every one of these required circumstances," said Lord Ellenborough, "is in itself perfectly arbitrary and (except only as it is in fact required), unessential in point of effect to the legal validity of any instrument by which, &c., * * If these circumstances be unessential and unimportant, except as they are required by the creators of the power, they can only be satisfied by a strictly literal and precise performance. They are incapable of admitting any substitution, because these requirements have no spirit in them, which can be otherwise satisfied; incapable of receiving any equivalent, because they are, in themselves, of no value." Id., 439–442. In *Lord Mordaunt* vs. *Earl of Peterborough*, it was provided, "that the said Earl might, by the consent of the Countess, obtain in writing a revocation in the presence of three witnesses, and it was doubted that her bare sealing the later deed was no sufficient assent to make a revocation, unless the later conveyance had been said to be by assent of her, or a mention of her consent in any other clause, and there was reason to make her a party to the later deed to

save her jointure; and the court conceived this no sufficient revocation. 3 Keble, 305. *Greenham* vs. *Gibbeson*, 10 Bing., 374, Sug. on Powers, 324. Therefore it is that if the person whose consent is necessary die before the execution of the power, without having consented, the power is gone. *Barber* vs. *Cary*, 1 Kern., 402. Thus, where there was a trust for sale, but no sale was to be made without the consent "of my sons and daughters," and a daughter had died leaving a husband absolutely entitled to her share, and all the surviving children and the husband consented to the sale, it was held to be too doubtful a title to force upon a purchaser. *Sykes* vs. *Sheard*, 2 De. G. J. & Smith, 6; *Phillips* vs. *Edwards*, 33 Beav., 440. It is, in short, an elementary principle that "where the consent of any person is required to the execution of the power, that, like every other condition, must be strictly complied with." 1 Sug. on Pow., 319.

If the present could really be regarded as the case of a power attempted to be exercised but defectively executed, it might be added, that equity will not aid the defective execution by a settler executing the power in his own favor. *Ward* v. *Booth*, 3 Ch. Cas. 69–92. Again, that equity will not aid a defective execution of a power if the intention of the author of the power would thereby be defeated. Leading cases 373 (*276), 2 Sug. Pow., 128. The Ward deed, if sustained, would vest in the husband the entire estate of the wife and child, thus defeating the very purpose of the settlement. It is because of the temptation and inducement to thus defeat the object of a settlement that a husband is especially not one of the favored objects on whose behalf courts of equity relieve against the defective execution of powers. *Hughes* v. *Wells*, 9 Hare, 769. The courts look with especial jealousy on any such transaction, in which the wife may have acted under the influence of her husband. *Hopkins* v. *Myall*, 2 Russ & N. Y., 86;

*Thackwell* v. *Gardner*, 5 DeG. & Sm., 58; *Majoribanks* v. *Hovenden*, 6 Irish Eq., R. 238; *Bibb* v. *Pope*, 43 Ala., 190.

But the conditions of the deed of trust to Hannay, not having been complied with in any particular, the power has not been executed at all; and there is a very essential distinction between the non-execution of a power and the defective execution of it. Equity will not help the non-execution of a power which is left to the free will and election of the party, whether to execute or not; for which reason equity will not say he shall execute it; or do that for him, which he does not think fit to do for himself. *Tollett* v. *Tollett*, 2 P. Wms., 490. Indeed, a court of equity by acting otherwise, in the case of a non-execution of a power, would, in effect, deprive the party of all discretion as to the exercise of it; and would thus overthrow the very discretion manifested by the parties in the creation of the power. Story Eq. Jur., § 170; *Howard* v. *Carpenter*, 11 Md., 259; *Lippincott* v. *Stokes*, 2 Halstead, Ch. 122. The non-execution of a power cannot be aided by proof of an intention to execute it. *Wilkinson* v. *Gettey*, 13 Iowa, 157. To sustain the Ward deed as a conveyance by Mrs. Brereton were to create a deed for a party who has not made one for herself.

In view of the principles and precedents adverted to, it should not require argument that no such deed as the one in controversy can be treated as a contract of the plaintiff, and as such enforced against her. In the first place, the contract of a married woman, unless for the benefit of herself or her separate estate, cannot be enforced against her estate. In *Collins* v. *Underwood*, a married woman's separate estate was sought to be subjected to the payment of a payment of a note executed by her jointly with her husband, and alleged to be in settlement of an account for the board and tuition of their daughter. The court said: "There is no evidence that the note was given for the benefit of either the defendant or her estate; but it plainly appears that it

was given in the satisfaction or settlement of her husband's debt, whose duty it was to provide for the support and education of his children." 33 Ark., 265; *Peake* v. *LaBaw*, 21 N. J. Eq. 282; *Shacklett* v. *Polk*, 4 Heisk, 104; *Curtis* v. *Engel*, 2 Sandf., Ch. R. 287; McCord on Rights of Married Women, Tit. Sep. Estate. In no event can her separate estate be made liable, by implication, for the satisfaction of any general debt, nor by an express contract which is not within the scope of the powers contained in the deed of settlement. *Litton* v. *Baldwin*, 8 Humph., 209; 10 id,, 555; *Lowry* v. *Naff*, 4 Caldwell, 370; *Kirby* v. *Miller*, id 3. The joint promissory note of Wm. and Samuel Brereton was in no sense the obligation or contract of Mrs. Brereton, and therefore cannot be on that ground a charge against her separate estate. "An accommodation endorsement by a married woman is not sufficient tn create a charge upon her separate estate." *Peake* v. *LaBaw*, 21 N. J., Eq. 269. "A married woman does not charge her separate estate by the execution of a promissory note with her husband, and as his surety, not for her own benefit or the enhancement of her estate." *Yale* v. *Dederer*, 18 N. Y., 265. "Mere equity, not resting on any positive contract, will never seize upon the separate estate of the wife, and appropriate it to the payment of a debt of the husband for which she is mere surety." S. C., 22 N. Y., 458; S. C., 68 N. Y., 329. In the District a married woman is not liable at law for scpplies furnished to her for the support of her family, upon her promise to pay for the same out of her separate property. *Schneider* vs. *Garland*, 1 Mackey, 350; *S. P. Davis* vs. *Ritchey*, 55 Iowa, 719 - *Staley* vs. *Hamilton*, 19 Fla., 275.

A married woman is not liable on a promissory note which she signed with her husband, if no consideration passed to her from the party to whom the note was given. A consideration between herself and her husband is not enough. *Reed* vs. *Buys*, 44 Mich., 80.

In the second place, by the general principles of the law, a married woman is, during her coverture, disabled from entering into any contract respecting her real property. This disability can be overcome only by adopting the precise means allowed by law for the disposition of her realty, Story Eq., § 1392. "He that wishes to divest a married woman of her land must take care that the statute is complied with before he parts with his money." (*Martin* vs. *Dev lly*, 6 Wend., 9. (Kelly on the Contracts of Married ried Woman, p. 270.) She can never be held without affirmative proof that the contract is her own and within her powers. *West* vs. *Larraway*, 28 Mich., 464; *Bailey* vs. *Pearson*, 9 Foster, 87. Now, in this District, the only contracts which by law she is permitted to make, are contracts in relation to separate estate derived from some other source than her husband. It is clear that the record discloses no sale, and no contract of sale of the separate estate of Mrs. Brereton, which is sanctioned either by the law of the District, or by the instrument creating the estate. "A contract on the part of the husband to sell the wife's land, though known and assented to by her, is not binding upon her or her heirs. She can only bind herself by executing a deed in the form prescribed by law." *Rogers* vs. *Brooks*, 30 Ark., 612.

It is nearly fifty years since Gibson, C. J., asked the question, "why is a settlement ever made?" and answered, "certainly to exclude the husband's control. But to exclude his direct control, which consists in an exercise of legal power, and yet leave him the means of giving effect to an indirect control, which consists in an exercise of personal influence, is to do nothing. * * We therefore hold it to be the settled law of Pennsylvania, that instead of having every power from which she is not negatively debarred in the conveyance, she shall be deemed to have none but what is positively given or reserved to her." *Thomas* vs. *Folwell*, 2 Wharton,

16. The same doctrine was announced by Chancellor Kent in *M. E. Church* vs. *Jacques*, 3 Johns Ch., 78; and although, on appeal to the Court of Errors, his opinion and the decree founded upon it, were pronounced erroneous, S. C., 17 Id., 548, is not so clear that his reasoning was answered. In 1863, it was said by Brinkerhoff, C. J: "It seems to me that the reasoning of Chancellor Kent in that case, and of Gibson, C. J., in *Thomas* vs. *Folwell*, 2 Whart., 11, has not been, and cannot be satisfactorily answered." *Machir* vs. *Burroughs*, 14 Ohio St., 522. In the case now before the court, not only the power claimed is not "positively given, but is positively withheld,—the estate having been conveyed to Hannay, upon the trusts mentioned, "and for no other use, trust, or purpose whatsoever." (Rec. p. 9.)

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